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THE HANDBOOK OF CORPORATE MANAGEMENT AND PROCEDURE

BY

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PREFACE

THE modern corporation is of such far-reaching importance that any attempt to compile and organize information relative to its development and operation should receive sympathetic consideration. Its activities and interests are so manifold that one or another aspect of the general subject might be made the basis of prolonged study.

As the result of the accumulation of data on the legal, financial, and managerial phases of corporate procedure various attempts have been made to compile manuals emphasizing various aspects of the subject, and dealing with them from a more or less practical point of view. The constant introduction of new methods and the evolution of legal and financial principles relating to corporate matters render necessary the continuation of efforts in the direction of the systematic accumulation and presentation of facts relating to corporate operations and procedure.

The present volume has as its object the presentation of such data, especially with reference to law, finance, and management. While originality of matter is not claimed, much data relating to new developments has been included. The purpose of the book is to provide ready reference to such facts as are needed in handling the everyday problems that confront all who are concerned in corporate affairs. With a view to providing such facts the materials included have been carefully selected with reference to trustworthiness and applicability to the more common problems that arise in the conduct of everyday affairs of corporate business. These concern such matters as meetings of stockholders and directors, the adequate handling of stock issues, the payment of dividends, the financing of working capital requirements, the issuance and routine treatment of bonds, the transfers of capital stock, the efficient employment of the investment in capital assets, the operation of voting trusts, and so on.

Materials have been drawn from numerous sources—original documents, authoritative texts on corporation law, publications of public bodies and private trade associations, statutes of the various states, and various treatises on special subjects. Attempt has been made to grant due credit to all who have in any way assisted in the securing of materials. In so far as possible the text has been documented by means of references to all sources consulted. This not only indicates the authoritativeness of the matter included but also assists the reader to make more extended investigations in specialized fields.

EARL A. SALIERS

April 19, 1929.

CONTENTS

PREFACE iii

PART I. CORPORATE ORGANIZATION

I

CORPORATIONS DEFINED AND CLASSIFIED 3

Corporation defined. Advantages of incorporation. Purposes of incorporation. De jure and de facto corporations. Relation of corporation to stockholders. Kinds of corporations. Classification of corporations under New York Law. Corporations defined in New York Law. Stock and non-stock corporations. Domestic, foreign and alien corporations.

II

FORMS OF ORGANIZATION OTHER THAN CORPORATE 13

Introductory. Individual proprietorship. Partnership. Joint venture. Joint stock company. Partnership associations. Legal status of limited partnership associations. Massachusetts trust.

III

PROMOTION 48

Promotion defined. Work of the promoter. Risks of promotion. Qualifications of promoters. Promoter's profits. Promoter's contracts. Promoter's expenses and liabilities. Legal status of promoter. Promotion and competition. Stages in promotion. Making the investigation.

IV

HOW AND WHERE TO INCORPORATE 69

Organization of corporations. Where to incorporate. Agreements preliminary to incorporation. Procedure to incorporate. The certificate of incorporation. Legal requirements, fees, etc. Powers granted to a corporation. Nature of corporate charters. Various charter provisions. Subscription agreement. State forms relating to incorporation, etc.

V

THE CORPORATE NAME 128

Purposes and limitations. Special requirements in various states. Choice of name. Protection of corporate name. Change of corporate name. Instructions for changing location.

VI

THE CORPORATION CHARTER 132

Charter defined. Power to create corporations. Incorporation under general laws. Constitutional restrictions. Grant of powers to corporations. Purposes of incorporation. Unauthorized and unlawful purposes. Statutory requirements. Special charter provisions. Special charter provisions illustrated. Preparation of charter. Signing and acknowledgment of statement of incorporation. Publication of notice. Filing of charter. Nature of certificate of incorporation. Amendments to charter. Amendment procedure. Issuance of charter. Incorporators. Specific qualifications of incorporators. Dummy incorporators. Number of incorporators. State forms.

VII

STOCKHOLDERS 202

Liability of stockholders. National banks. Nature of stockholders' liability. Statute of limitations. Liability of pledgees, trustees, etc. Contribution among stockholders. Stockholders liable as partners. How transfer affects liability. Assessments on full-paid stock. Liability on watered stock. The right to vote. Statutory regulation of voting right. Who exercises the right to vote. Manner of voting. Voting by proxy. Cumulative voting.

VIII

STOCKHOLDERS' MEETINGS 219

Powers of stockholders. First meeting of stockholders. Adoption of by-laws. Election of directors. The annual meeting. Notice of stockholders' annual meeting. Preparation for annual meeting. Procedure at annual meeting. Preliminary transactions. Quorum. Routine procedure. Methods of voting, etc. Right to vote. Reports of officers. Election of officers. Unfinished business, new business, adjournment. Stockholders' special meetings. Notice of special meeting. Service of notice of special meetings. Waiver of notice. Proceedings at special meetings. Adjournment. Stockholders' resolutions. Minute book, or record of proceedings. Stockholders' meeting illustrated. Forms used in connection with stockholders' meetings.

IX

THE BOARD OF DIRECTORS 274

Liability of directors. Function and organization of board of directors. Power of board of directors. Tenure of office of directors. De facto directors. Directors' meetings. First directors' meeting. Adjourned meetings. Place of meeting. Special meetings of directors. Notice of special meetings. Service of notice. Quorum. Limitations on powers of directors. Delegation of power. Directors' committees. Fiduciary powers of directors. Negligence of directors. Liability of directors to creditors and others. Statutory liability of directors. Directors' resolutions. Legal nature of resolutions. Directors' resolutions illustrated.

X

By-Laws 311

Power to make by-laws. Power to alter or repeal by-laws. Method of alteration or repeal of by-laws. Purpose of by-laws. Tests of validity of by-laws. Validity of particular by-laws. Void by-laws as effective contracts.

PART II. FINANCE

XI

Rules Governing Corporate Financing Sources of Invested Capital 339

Financial responsibility of management. Sources of funds. Division of funds between current and capital assets. Treatment of funds invested in capital assets. Financial structure of business.

XII

Working Capital Financing 347

The problem of current financing. The working capital position. Proper amount of working capital. Circulating capital. Sources of cash and working capital. Commercial paper. Investigation by note broker. Bank's investigation of commercial paper. Bank loans. Banks and small borrowers. Unsecured bank loans. The rate of interest. The rediscount privilege. Trade acceptances. Uniform trade acceptances. Bank acceptances. Work of commercial discount houses. Warehouse receipts. Use of warehouse receipts. Kinds of warehouse receipts. Uniform Warehouse Receipts Act. The use of credit to finance sales. Form of conditional sales contract of dependent finance company. Conditional sale contract of independent finance company. Repossession, damage to car. Adopting time payment plan. Importance of automobile sales financing. The automobile finance company. Various plans of automobile financing. Credit investigation. Financing automobile dealers. Retail finance plan for phonograph company. Finance company *vs.* bank. Open market financing. The subsidiary finance company. Financing finance companies. Relation of finance company to dealer. Three plans of instalment financing. Rules to be followed. Finance company accounting. Services of factors.

XIII

Permanent Capital Financing 442

Function of capital stock. Capital stock *vs.* capital. Capital stock *vs.* capitalization. Issuance of shares. Par value *vs.* non par value stock. Authorized stock. Issued stock. Treasury stock. Preferred stock. Relation of preferred and common stock. The redemption privilege. Preferred stock certificate illustrated. Con-

vertible stock. Preferred stock exchanged for bonds. Warrants. Guaranteed stock. Bankers' shares. Dividends. Stock rights. Value of rights. Splitting of stock. Historical note. Concept of stated capital. Statutory requirements relative to stated capital. Analysis of proprietorship; Dividends. Treatment of surplus. Subscriptions. Unissued capital stock. Donated stock. Treasury stock. Classes of non par shares. Voting privileges. Changing to non par value shares. Miscellaneous statutory regulations. Non par value stock issues illustrated. States permitting issuance of non par stock.

XIV

ACCOUNTING FOR CAPITAL STOCK 503

Problems involved. Par value stock. Non par value stock. Stock authorized but not issued. Two or more classes of stock. Subsidiary stock records. Subscription accounts. Instalments illustrated. Procedure for non par value stock. Stock sales at other than par value. Entries for treasury stock purchased at par. Entries for treasury stock purchased below par. Entries for treasury stock purchased above par. Entries for treasury stock donated. Capital stock in the balance sheet.

XV

PERMANENT CAPITAL FINANCING 550

Introductory. The investment banker. The financial plan. Financial plan for going concern. General principles of borrowing. The mortgage. Form of mortgage. Explanation of essential clauses. Operation of mortgage. The corporate mortgage. Nature of trust indenture. Contents of trust indenture. Bond form. Interest coupon. Trustee's certificate. Granting clause and property transferred or pledged. Trust reservation. Reconveyance clause. Form, execution, exchange and issue of bonds. Particular covenants of the company. Sinking fund provisions. Redemption of bonds. Release of property from indenture lien. Supplemental indentures. Remedies on default. Waiver of individual liability. The trustee. Duties of fiscal agent. Bonds classified and described. Mortgage and prior lien bonds. Collateral trust bonds. Unsecured bonds. Equipment trust certificates and equipment bonds. Guaranteed bonds. Divisional bonds. Special lien bonds. Receivers' certificates. Long and short term bonds. Notes. Callable bonds. Serial bonds. Sinking fund bonds. Registered bonds. Closed-end mortgages. Limited open-end mortgages. The rate of interest. Income bonds. Adjustment bonds. Participating bonds. Convertible bonds. Bonds with stock warrants. Bonds authorized and issued. Bonds sold through bankers. Contingent liability on guaranteed bonds. Accounting for securities deposited as collateral. Accounting for equipment trust bonds. Treatment of accrued interest. Funds for paying bond interest. Monthly interest. Accruals. Bond discount and premium. Sinking fund requirements of trust indentures. Sinking fund of Amalgamated Phosphate Company. Sinking fund of National Dairy Products Corporation. Accounting for sinking fund transactions. Accounting for sinking fund reserves. Redemption of bonds.

PART III. MANAGEMENT AND CONTROL

XVI

VALUATION AND APPRAISALS 733

Purposes of appraisals. Bases of valuation. Meaning of value. Original cost. Reproduction cost. Reproduction cost less depreciation. Market value. Problems involved.

XVII

APPRAISALS OF REAL ESTATE 740

Importance of real estate. Factors determining real estate values. Effect of interest rate. Effect of taxes. Effect of general business conditions. Practical basis of valuation. Pedestrian counts. Net income as valuation base. Sales of neighboring property as valuation base. Valuation of composite plant. Capitalization of assets. Capitalization of assets illustrated. Comments on specific assets.

XVIII

APPRAISALS OF WASTING ASSETS 754

Wasting assets defined. Depletion. Development of theory of depletion. Methods of appraisal adopted by U. S. Treasury. Present value method. Factors to be presented. Finding present market value. Segregation of minerals. Value at given date. Rate of interest. Depletion of gas and oil properties. Depletion of timber land. Appraisal formulae. Hoskold's formula. Hoskold's table. Application of Hoskold's table.

XIX

ACCOUNTING FOR APPRAISALS 766

Accounting procedure. Illustration—excessive depreciation charges. Illustration—excess value due to appreciation; replacement cost provided for by reserve. Illustration—excess value due to appreciation; original cost provided for by charge to depreciation expense. Appraisals for insurance purposes. Illustration. Settlement of fire losses. Appraisals for tax purposes. Appraisals for financial purposes. Illustration—consolidations. Mergers. Illustration—mergers.

XX

TREATMENT OF CORPORATE REVENUES AND SURPLUS 77

Origin of surplus. Origin of earned surplus. Revenue from ordinary operations. Origin of paid-in surplus. Capital surplus arising from revaluations. Treatment of surplus. Surplus reserves. Dividends. Dividends classified. Dividend record of General Motors Corporation. Declaration of dividends. Dividends on preferred stock. Accounting treatment of dividends. Dividends payable in other media than cash.

XXI

CORPORATION REPORTS 798

Nature of corporation reports. Annual report to stockholders. Annual report of American Telephone and Telegraph Company. Annual report of General Motors Corporation. Annual report of the B. F. Goodrich Company. Quarterly reports to stockholders. Nature of internal reports. To whom reports are made. Annual reports to state. Blue Sky Law Reports.

XXII

BUDGETS 852

Procedure. Advantages of a budget. Budgeting plant expenditures. Budgeting plant expenses. Expense budgets. Basis of expense allocation. Procedure for expense budget. Classification of expenditures on plant. Plant and equipment budget. Statistical data on plant.

XXIII

BALANCE SHEET ANALYSIS 860

The balance sheet. Balance sheet construction. Profit and loss statement. Method of procedure. Analysis of single balance sheet. Analysis of two balance sheets. Analysis of balance sheet in conjunction with income statement of preceding period. Comments on balance sheet analysis.

XXIV

VOTING TRUSTS 872

Purpose and origin of voting trusts. Legality of voting trusts. Voting trusts distinguished from proxies. Banking corporations. Terms of voting trust agreements.

XXV

THE INVESTMENT IN PLANT 888

Purpose of expenditures. Turnover defined. Volume of sales expressed in dollars. Volume of sales expressed in physical quantities. Sales and investment figures to be used. Effect of increased turnover on capital assets illustrated. Standardization of turnover rates. Making weighted index numbers. Use of index numbers illustrated. Nature of plant expenses. Nature of depreciation. Depreciation defined. Depreciation classified. Effect of composite depreciation. Depreciation as expense. Depreciation *vs.* repairs. Average life. Depreciation base. Protecting the investment. How balance sheet changes. Correct procedure; valuation reserves. Effect on balance sheet. How replacements are made. Depreciation reserve on balance sheet. Allocating depreciation to departments. Overtime, idle time and depreciation rate. Allocating depreciation to output. Illustration. Meaning of departmentization. Purpose of departmentization. Expense

distribution. Distribution of capital asset expenses illustrated. Determining departmental capital asset costs. Expenses incident to capital asset investments. Information necessary for departmental control. Principles of account classification. Classification based on function. The limits of classification. Classification illustrated—retail meat and grocery business. Purpose of plant records. Nature of plant records. Form of plant ledger. How plant ledger should be controlled. Procedure advocated by United States Chamber of Commerce. Purpose. Origin. Approvals. Uses. Procedure of large steel manufacturer.

XXVI

STOCK TRANSFERS 957

How stock ownership is transferred. Stock exchange regulations. Negotiability of stock certificates. Lost and stolen certificates. Form of endorsement. New York Stock Transfer Tax Law. Stock transfer department. Procedure of transfer division. Accounting for stock transfers. Stock transfer procedure for small companies. Independent transfer agents. Stock certificate book.

XXVII

THE STOCK EXCHANGE 1033

Kinds of markets. New York Stock Exchange. New York Curb Market. Listing. Committee on Stock List of N. Y. Stock Exchange.

XXVIII

HOLDING COMPANIES 1073

Modern tendencies. Consolidated statements. The work sheet. Treatment of goodwill. Treatment of surplus. Treatment of other items. The consolidated balance sheet. Consolidated balance sheet of U. S. Steel Corporation.

XXIX

BANKRUPTCY AND INSOLVENCY 1084

Insolvency. National Bankruptcy Act. Application of National Bankruptcy Act. Voluntary and involuntary bankruptcy. Bankruptcy procedure. Effect of discharge in bankruptcy. Distribution. Duties of referees. Duties of trustees. Schedules of debts and assets. Schedule A. Schedule B. Summary of debts and assets. Forms adopted by U. S. Supreme Court. Property exempted. Nature of receiverships. Receiver's accounts. Appraisal and statement of affairs. Entries on receiver's books. Receiver's trial balance and closing entries. Receiver's report to court. Ending the receivership in case of reorganization. Receivership and sale. Realization and liquidation account. Legal formalities at time of dissolution.

XXX

CORPORATE REORGANIZATIONS 1128

Reasons for reorganization. Scope of remedial measures. Reorganization illustrated. Receivership and reorganization illustrated. The plan. Method of procedure. Securities to be issued. Discretion of reorganization committee. Treatment of securities to be adjusted. Manner of participation. Reorganization committee. Underwriters. Declaring plan operative. Cash requirements. Construction and amendment of plan. Statements and estimate. Notices and extension of time. The reorganization agreement. Scope and terminology. Deposit of securities, etc. How holders of securities, claims, etc., may benefit. Failure to deposit securities, claims, etc. Certificates of deposit. Escrow provision. Reorganization committee made attorney of depositors. Procedure or reorganization committee. Miscellaneous provisions of agreement. Deposit and protective agreements. Reorganization of subsidiary company.

XXXI

STATE AND FEDERAL REGULATION 1182

Need of regulation. The Sherman Act. Amendments to Sherman Act. The Clayton Act. Blue Sky Laws. Construction and operation of Blue Sky Laws. Effect of non-compliance with law. Practice before Federal Trade Commission. Filing briefs with Federal Trade Commission. Settlement of cases by stipulation. Commission's policy as to publicity. Trade-practice conferences.

FORMS

1. Declaration of trust of Western Massachusetts companies 24
2. Option agreement to sell property to promoter..... 55
3. Contract of subscribers with promoter or contractor. 56
4. Offer to underwrite addressed to promoter..... 58
5. Underwriting agreement 58
6. Promoter's acceptance of offer to underwrite..... 59
7. Company's acceptance of offer to underwrite..... 59
8. Agreement to purchase property..... 60
9. Notice accepting option..... 61
10. Incorporation requirements of some of the leading states 70-86
11. Agreement preliminary to formation of manufacturing company 87
12. Agreement to organize a corporation..... 88
13. Subscription agreement 103
14. Declaration for charter, state of South Carolina..... 104
15. Charter by the secretary of state, the state of South Carolina 105-106
16. Statement of foreign corporations, state of South Dakota 108
17. Designation of representative in the state of California 109-110
18. Foreign corporation—certificate of business and agent (Colorado) 111
19. Affidavit in re proportion of capital stock employed in Colorado 112
20. Appointment of the secretary of state as attorney for service of process 113
21. Certificate of renewal (Iowa)..... 114
22. Statement extending business purposes (Missouri)... 115
22a. Affidavit changing location of domestic corporation (Missouri) 116
23. Amended certificate of incorporation before payment of capital stock..... 117
24. Certificate of incorporation, state of New Jersey..... 119
25. Certificate of incorporation for use by corporations having both preferred and common stocks with par value 120

26. Certificate of incorporation common stock (without nominal or par value) 122
27. Certificate of incorporation common stock and preferred stock (without nominal or par value) 124
28. Certificate of incorporation common stock (without nominal or par value), preferred stock (with par value) 126
29. (*a*) Special purpose clauses—advertising 140
30. " " " —aeroplanes 141
31. " " " —aluminum 141
32. " " " —amusements 141
33. " " " —athletic club 142
34. " " " —audit company 142
35. " " " —automobiles 142
36. " " " —bakery 143
37. " " " —boilers 143
38. " " " —brick 143
39. " " " —brokerage 143
40. " " " —building company 143
41. " " " —building materials 144
42. " " " —castings 144
43. " " " —cereals 144
44. " " " —chemicals 145
45. " " " —coaches 145
46. " " " —coal mining 145
47. " " " —coal and iron 145
48. " " " —commission merchant . 146
49. " " " —construction 146
50. " " " —contracting and building 146
51. " " " —dairy products 147
52. " " " —department store 147
53. " " " —drugs 147
54. " " " —dry goods 147
55. " " " —electric light and power 148
56. " " " —engineering 148
57. " " " —expressing 148
58. " " " —flour 148
59. " " " —foundries 148
60. " " " —furniture 149
61. " " " —garage 149
62. " " " —grain 149
63. " " " —groceries 149
64. " " " —hardware 149

65. (*a*) Special purpose clauses—heating apparatus.... 150
66. " " " —hotel 150
67. " " " —ice 150
68. " " " —insurance agent..... 150
69. " " " —iron and steel..... 150
70. " " " —laundry 151
71. " " " —lumber 151
72. " " " —machinery 151
73. " " " —meat 151
74. " " " —mining 152
75. " " " —moving pictures..... 152
76. " " " —paint 152
77. " " " —publishing 152
78. " " " —real estate..... 153
79. " " " —ship-building 153
80. " " " —storage 153
81. " " " —tobacco 153
82. (*b*) General purposes clauses—power to acquire business 153
83. " " " —assuming other businesses 154
84. " " " —consolidation and cooperation 154
85. " " " —power to acquire own stock 154
86. " " " —power to acquire securities of other corporations 154
87. " " " —power to borrow money by issuing securities 154
88. " " " —power to do business anywhere 155
89. " " " —power to do business in other states.... 155
90. " " " —power to issue securities 155
91. " " " —power to contract... 155
92. " " " —power to aid other corporations 155
93. " " " —general object clause. 156
94. (*c*) Regulating clauses—accounts..... 156
95. " " —auditors 156

96. (*c*) Regulating clauses—power to examine corporation records..... 157
97. " " —stock certificate and stock transfers 157
98. " " —power of directors over capital stock and dividends. 157
99. " " —increase of capital stock... 158
100. " " —reduction of capital stock.. 158
101. " " —voting by proxy..... 158
102. " " —cumulative voting..... 159
103. " " —dividends 159
104. " " —power of board of directors 159
105. " " —executive committee..... 159
106. " " —by-laws 160
107. " " —limitation on power to mortgage or pledge..... 160
108. Capital stock clauses—preferred stock; dividends cumulative, payable quarterly; preferred as to par value and accrued dividends on dissolution..... 160
109. Preferred stock convertible into common stock..... 161
110. Founders' shares..... 161
111. Statement of incorporation..... 174
112. Certificate of amendment..... 180
113. Amended certificate of incorporation of American Steel Foundries 182
114. Charter of Fire Insurance Company of Chicago—notice of incorporation..... 192
115. The charter of General Electric Company, reproduced below, illustrates incorporation by special act of legislature 196
116. Notice of meeting to organize corporation..... 251
117. Waiver of notice of first meeting of stockholders..... 252
118. Proposal to exchange property for stock..... 252
119. Authentication of record book and records..... 253
120. Stockholder's resolution directing purchase of property 253
121. Stockholder's resolution accepting property..... 254
122. Minutes of first meeting of stockholders of..... 254
123. Minutes of adjourned meeting of stockholders..... 256
124. Minutes of first stockholders' meeting..... 257
125. Notice of stockholders' annual meeting..... 260
126. Notice of annual meeting of stockholders..... 260
127. Notice of stockholders' annual meeting..... 261
128. Notice of annual meeting of stockholders..... 261

129. Notice of annual meeting of stockholders..... 262
130. Notice of stockholders' meeting to dissolve corporation 263
131. Notices of annual meeting of stockholders and accompanying letter 264-265
132. Stockholders' request for special meeting of stockholders 266
133. Notice of adjourned annual meeting of stockholders.. 266
133a. Ticket for admission to stockholders' meeting..... 267
134. Affidavit of mailing notice..... 267
135. Affidavit of publishing notice..... 268
136. Tellers' oath and report..... 268
137. Notice of election: acceptance of same..... 270
138. List of stockholders..... 271
139. Form of ballot..... 271
140. Proxy to vote—limited..... 272
141. Proxy to vote—unlimited..... 272
142. Proxy to vote (another form)..... 272
143. Proxy to vote (another form)..... 273
144. Waiver of notice and consent to meeting..... 303
145. Notice of special meeting of directors..... 303
146. Notice of regular meeting of directors..... 304
147. Notice of first meeting of directors..... 305
148. Waiver of notice of first meeting of directors..... 305
149. Ratification of proceedings by directors..... 305
150. Directors' resolution appointing general manager.... 306
151. Directors' resolution appointing auditor..... 306
152. Directors' resolution removing auditor..... 306
153. Resolution authorizing execution of contract..... 306
154. Directors' resolution authorizing loan..... 307
155. Directors' resolution appointing registrar..... 307
156. Secretary's certificate to registrar..... 308
157. Directors' resolution accepting property..... 309
158. Directors' certificate of appraisal..... 309
159. Affidavit of change in number of directors (Missouri) 310
160. Officer's tender of resignation..... 310
161. By-laws of American Steel Foundries as Amended July 7, 1927..... 320
162. By-laws of the General Electric Company..... 330
163. Commercial paper..... 357
163a. Commercial paper, etc..... 358
164. Information concerning borrower..... 360
165. Bank's investigation of commercial paper..... 362
166. " " " " " 362
167. " " " " " 363

168. Bank's investigation of commercial paper..... 363
169. " " " " " 364
170. Application blank for loan..... 367
171. Standard form of trade acceptance..... 375
172. Modified form of trade acceptance..... 375
173. Acceptance stamped on face of draft..... 378
174. " " " " " " 379
175. " " " " " " 379
176. " " " " " " 379
177. " " " " " " 379
178. Commercial letter of credit..... 380
179. Trust receipt..... 381
180. Application for commercial letter of credit..... 382
181. General commercial letter of credit agreement..... 383
182. Contract form used by commercial discount house... 387
183. Non-negotiable warehouse receipt..... 394
184. Conditional sale contract.....after 402
185. Purchaser's statement .....before 403
186. Conditional sale contract..... 403
186a. Conditional sale contract..... 409
187. Retailer's contract with consumer..... 415
188. Contract of Erless Phonograph Company with Reed Financial Corporation 416
189. Promissory note 428
190. Promissory note with confession of judgment..... 428
191. Note payable to corporation..... 429
192. Draft 429
193. Endorsement in blank..... 429
194. Restrictive endorsement..... 429
195. Endorsement without recourse..... 430
196. Endorsement for collection..... 430
197. Endorsement waiving protest..... 430
198. Restrictive endorsement..... 430
199. Collateral note with power of attorney..... 431
200. Application for loan..... 432
201. Application for loan (short term)..... 433
202. Coupon note..... 433
203. Agreement to renew loan..... 434
204. Agreement to extend loan..... 435
205. Instalment note 436
206. Instalment note (another form)..... 436
207. Notary's certificate of protest..... 437
208. Collateral note with power to sell (another form)..438-439
209. Short form of collateral note..... 440

210. Collateral note with power to sell 441
211. Certificate of preferred stock of Red Douglas Pocahontas Company 453
212. Interest certificate 457
213. Acme Company, Instalment No. 1, 20%, Due February 1, 1927 512
214. Resolution assessing stock 520
215. Resolutions of directors making a call on stock 520
216. Notice of call 520
217. Published notice of call 521
218. Notice of final call upon partly paid stock 521
219. Waiver of notice of payment of assessment 522
220. Receipt for instalment 522
221. Notice of liability to forfeiture 522
222. Resolution to forfeit shares 523
223. Notice of forfeiture 523
224. Notice of sale of stock forfeited 523
225. Certificate of stock 524
226. Full paid certificate of stock 525
227. Certificate of stock partially paid for 525
228. Temporary certificate 526
229. Certificate of preferred stock 527
230. Certificate of preferred stock (United States Steel Corporation) 528
231. First preferred stock certificate 529
231a. Oath of publication 531
231b. Oath of judges 532
231c. Judges' return 533
232. Fraction of share of stock 534
233. Fraction of share of stock (another form) 534
234. Agreement to deposit stock in escrow 535
235. Subscription agreement prior to organization 535
236. Pre-incorporation subscription agreement with terms of proposed stock issue 536
237. Power of attorney to subscribe for stock 536
238. Subscription to capital stock after incorporation 537
239. Subscription by letter 537
240. Revocation of subscription 538
241. Individual subscription blank 538
242. Remittance with application for stock 538
243. Allotment letter 539
244. Receipt for subscription 539
245. Transfer of subscription 539

246. Certificate of amendment increasing capital stock (Kentucky) 540
247. Increase of capital stock or indebtedness (Pennsylvania) 541
247a. Increase of capital stock or indebtedness (Pennsylvania)—(Continued) 542
247b. Resolutions of the board of directors..... 543
247c. Judges' return..... 544
248. Increase of capital stock or indebtedness (Pennsylvania) 545
249. Report of sale of capital stock (Missouri)..... 546
250. Statement decreasing capital stock (Missouri)..... 547
251. Affidavit of ownership to accompany bond of indemnity 548
252. Bond of indemnity for issue of stock certificates..... 549
253. Letter to investment bankers..... 554
254. Trust deed form of mortgage..... 560
255. First mortgage of corporation..... 568
256. Collateral trust indenture of corporation..... 628
257. Trustee's memorandum 665
258. Record of cancellation..... 665
259. Requisition for certification of bonds..... 666
260. Trustee's bond record..... 666
261. Trustee's record of examination..... 667
262. Cremation certificate 670
263. Notice of fiscal agent's appointment..... 671
264. Stop payment order..... 672
265. Affidavit 673
266. Bond of indemnity..... 674
267. Directing payment without production of bonds or coupons 675-676
268. Redemption call..... 689
269. Redemption call for part of issue..... 690
270. Registrar's record..... 696
271. Registrar's record (another form)..... 696
272. Notice of redemption..... 725
273. Notice of redemption (another form)..... 726
274. Notice of redemption (another form)..... 727
275. Notice of bonds drawn for redemption (another form) 728
276. Specimen valuation set-up..... 739
277. Specimen summary sheet..... 739
278. Dividend notice..... 790
279. Dividend notice (another form)..... 791
280. Dividend notice (another form)..... 791

281. Dividend notice (another form) 791
282. Dividend notice (another form) 792
283. Dividend notice (another form) 793
284. Dividend notice (another form) 793
285. Dividend notice (another form) 793
286. Notice to directors of meeting to declare dividend 794
287. Resolution declaring dividend 794
288. Letter accompanying dividend check 794
289. Standing dividend order 795
290. Standard dividend order (another form) 795
291. Form of dividend book 796
292. Dividend check with stub 796
293. Notice accompanying dividend check 797
294. American Telephone and Telegraph Company, balance sheet, December 31, 1927 803-804
295. American Telephone and Telegraph Company, statement of earnings and expenses for the year ending December 31, 1927 805
296. Auditor's certificate 806
297. Bell System balance sheet, December 31, 1927 807-808
298. Bell System income statement for year ending December 31, 1927 809-810
299. Auditor's certificate 814
300. Condensed consolidated income account 815
301. Surplus account 816
302. General Motors Corporation, condensed consolidated balance sheet 817-818
303. The B. F. Goodrich Company, annual report 819
304. Statement of General Electric Company to its stockholders 825
305. Statement of General Electric Company to its stockholders 826
306. American Steel Foundries, consolidated income account 826
307. Utah Copper Company, quarterly report 827
308. Statement of U. S. Steel Corporation and Subsidiary Companies 828
309. New Jersey—Annual report of officers and directors by foreign corporation 833
310. New Jersey—annual report of officers and directors by domestic corporation 835
311. Illinois—annual report of officers and directors by foreign corporation 836

312. Illinois—annual report of officers and directors by domestic corporation 841
313. Affidavit accompanying annual report..... 847
314. Illinois corporation reports..... 848
315. Suggested form of expense budget..... 857
316. Federal Reserve Board form of balance sheet..... 862
317. Form of statement of profit and loss recommended by Federal Reserve Board..... 865
318. The B. C. Company comparative balance sheet..... 867
319. The B. C. Company work sheet showing application of funds 869
320. The B. C. Company statement of application of funds for the year ending December 31, 1924..... 870
321. Voting trust agreement..... 879
322. Voting trust certificate..... 880
323. Notice of meeting of holders of voting trust certificate 887
324. Index number of prices..... 891
325. Index number of wholesale prices..... 897
326. Classification of manufacturing expenses..... 920
327. Relation of costs of non-operating functions to costs of operating functions..... 925
328. Treatment of non-operating costs where departments are housed separately..... 926
329. Treatment of costs where considerable division of works exists..... 930
330. Inventory record of equipment..... 933
331. Machinery record..... 934
332. Record of minor equipment..... 936
333. Record of machinery..... 936
334. Property and depreciation record..... 937
335. Record of inventoriable equipment..... 938
336. Detail sheet..... 939
337. Plant ledger suggested by United States Chamber of Congress 945
338. Form accompanying request and estimate..... 948
339. Request and estimate..... 948
340. Purchase order 950
341. Procedure for plant expenditures..... 951
342. Special appropriation request..... 951
343. Estimate of cost on special appropriation..... 952
344. Job order..... 953
345. Report of charges on completed special appropriation. 955
346. Report of charges on completed special appropriation 956
347. Uniform Stock Transfer Act..... 959

348. Power of substitution 965
349. Sections 270, 271, 271a, and 272 of N. Y. Stock Transfer Tax Law 967
350. Rules governing the collection of the tax on transfers of stock and other certificates under New York Act 971
351. Account book to be kept by brokers under New York Law 977
352. Account book to be kept by corporations, transfer agents and trustees under New York Law 977
353. Certificate to be filed with the department of taxation and finance by stock brokers, section 275-a, Tax Law 978
354. Certificate to be filed with the New York Department of Taxation and Finance by Associations, Trustees and Corporations, section 275-a, Tax Law 978
355. Stub and receipt for common stock certificate 981
356. Stub and receipt for preferred stock certificate 981
357. Transfer sheet 983
358. Duplicate of transfer sheet 984
359. Authorized signatures 985
360. Listing stop orders (buff used for common stock) 986
361. Listing stop orders (salmon used for preferred stock) . 987
362. Letter acknowledging receipt of certificates 987
363. Letter to replace certificates 988
364. Keyboard diagram of Burroughs Adding Machine used in stock transfer department 994
365. Monthly report of sales of employees' stock 995
366. Dividend check folder 996
367. Stockholders' ledger sheets 997
368. Stockholders' record cards 998
369. "Out Card" 999
370. Dividend check folder 999
371. Daily balance sheet 999
372. Monthly report of transactions 1001
373. List of dividend checks 1001
374. Monthly report of sales of employees' stock 1003
375. Notice of change of address 1003
376. Dividend order 1004
377. "Similarity" letter 1005
378. Stockholders' list 1006
379. Request to return certificate 1006
380. Letter used by brokers 1007
381. Letter concerning requirements as to stock in name of deceased person 1008

382. Memorandum to general counsel 1009
383. Notary public acknowledgment form 1010
384. Notice of meeting and proxy 1011
385. Stock journal 1013
386. Stock ledger 1013
387. Requirements of independent transfer agent First Trust and Savings Bank 1015
388. Requirements of transfer agent regarding signatures .. 1016
388a. Requirements of transfer agent regarding signatures, (continued) 1017
389. Resolution appointing transfer agent 1018
390. Resolution appointing registrar 1022
391. Record of registration 1025
392. Receipt kept by transfer agent 1026
393. Stock transfer book 1027
394. Stockholders' ledger 1027
395. Stock ledger 1027
396. Transfer book 1028
397. Stock certificate book 1029
398. Power of attorney for transfer stock 1030
399. Irrevocable stock power of attorney 1031
400. Irrevocable stock power 1032
401. Memorandum of committee on stock list 1038
402. Rules for delivery of committee on securities 1055
403. Requirements of the committee on securities for companies offering the privilege to subscribe for new securities to holders of its securities listed on the exchange 1068
404. Closing of transfer books 1070
405. Companies having securities on N. Y. Stock Exchange 1070
406. Consolidating work sheet for the X Company and subsidiaries as at December 31, 19... 1076
407. Consolidated balance sheet for the X Company and subsidiaries as at December 31, 19... 1080
408. Consolidated general balance sheet, December 31,1927 1081
409. Debtor's petition 1096
410. Statement of all debts of bankrupt 1097
411. Creditors holding securities 1098
412. Creditors whose claims are unsecured 1099
413. Liabilities on notes or bills discounted, which ought to be paid by the drawers, makers, acceptors, or indorsers 1100
414. Accommodation paper 1101
415. Statement of all property of bankrupt 1102

416. Personal property schedule 1103
416a. Personal property schedule (continued) 1104
417. Choses in action schedule 1105
417a. Choses in action schedule (continued) 1106
418. Property in reversion, remainder or expectancy, including property held in trust for the debtor, or subject to any power or right to dispose of or to charge 1107
418a. Property in reversion, remainder or expectancy, including property held in trust for the debtor, or subject to any power or right to dispose of or to charge (continued) 1108
419. A particular statement of property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy 1109
420. Books, papers, deeds and writings relating to bankrupt's business and estate 1110
420a. Oath to schedule B 1111
421. Summary of debts and assets 1111
422. Company X, statement of affairs, July 1, 19... 1113
423. Preliminary certificate of dissolution (Connecticut) .. 1124
424. Preliminary certificate of dissolution (Connecticut) .. 1125
425. Final certificate of dissolution (Connecticut) 1126
426. Wilson & Co., Inc., and subsidiary and affiliated companies consolidated balance sheet as of August 30, 1924 1142
427. Estimated balance sheet referred to and explained in subdivision XV on page 18 of the plan 1144
428. Estimated statement of interest bearing obligations as of August 30, 1924, after giving effect to the adjustments specified in the plan of reorganization. 1146
429. Estimated statement of charges against earnings and dividends on basis of figures for gross earnings for year ended December 27, 1924, after giving effect to the adjustments specified in the plan of reorganization 1146
430. Deposit and protective agreements 1152
431. Continental Paper & Bag Mills Corporation and subsidiary companies, comparative consolidated general balance sheets 1164
432. Deposit agreement 1167
433. Option notice 1179
434. Letter to bondholders 1180
435. Text of Federal Trade Commission Act 1194
436. Voucher check 1203

437. Voucher check (another form) 1204
438. Duplicate voucher 1205
439. Indemnity bond (blank) 1205
440. Registered security 1206
441. General contract (short form) 1210
442. Real estate option contract 1211
443. Garnishee demand notice to employer 1212
444. Garnishee demand notice to employee 1213
445. Answer of garnishee (corporation) 1214
446. Notary public's bond (Illinois) 1216
447. Contract to sell real estate 1218
448. Contract with employee 1218
449. Power of attorney, with an interest 1219
450. General power of attorney 1221
451. Petition for appointment of notary public (Illinois) .. 1222
452. Notary's certificate of acknowledgment 1224
453. Exclusive sales contract 1224
454. Contract for exclusive sales agency 1225
455. Final notice before suit 1226
456. Demand for wages before suit 1227
457. Assignment of wages 1227

THE HANDBOOK OF CORPORATE MANAGEMENT AND PROCEDURE

PART I

CORPORATE ORGANIZATION

I

CORPORATIONS DEFINED AND CLASSIFIED

1. Corporation Defined

Corporations are formed by consent of the state, to secure a form of organization adapted to modern requirements. Since corporations owe their existence to the consent of the state, it is necessary that they comply with the provisions of the state laws in order to continue in existence. These requirements met, the corporation acts in the same manner as does a real person—contracting, suing and being sued, and engaging in business affairs.

The description of a corporation given by Chief Justice Marshall in the Dartmouth College Case, 4 Wheaton 636, follows:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality and, if the expression may be allowed, individuality, properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal thing.

A more recent description of the legal aspects of the

corporation is found in Thompson on *Corporations*, 3rd edition, Sec. 2, as follows:

A private corporation is a voluntary union of persons, joined together by written articles of association or incorporation under legislative authority, or by special statute on proper application to the legislature, to accomplish some pecuniary or ideal purpose authorized by the governing body of a state. Its leading features are that it has a continuous succession during the period described for its existence, and an individual name by which it may enter into contracts and sue and be sued, acting as a unit in respect to all matters within the scope of the purposes for which it is created, and a distinct existence or legal entity separate and distinct from the natural persons composing it. The essential idea of a corporation is that it has the capacity to exist and act within the powers granted, as a legal entity, apart from the individual or individuals who constitute its members.

1 Kyd *Corporations*, 13, defines a corporation as:

A collection of many individuals united in one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive according to the design of its institution or the powers conferred upon it, either at the time of its creation, or any subsequent period of its existence.

Dwight, in *Persons and Personal Property*, Sec. 350, says:

A corporation is an artificial person, created by law, having continuity of existence, either definite or indefinite, and capacity to do authorized acts, and capable, however numerous the persons composing it may be, of acting as a single individual.

2. Advantages of Incorporation

The incorporation of a business gives it certain advantages, as follows:

1. Incorporation makes possible the combining in a single enterprise of a larger amount of capital than would otherwise be possible.

2. It limits the liability of the stockholder to the amount of his

investments, thus freeing the remainder of his estate from liability for the debts of the corporation.

3. It makes possible a more satisfactory form of organization than is otherwise usually obtainable, an important feature of which is its continued existence, uninterrupted by the death of one or more members.

4. The individual members are, as a rule, relieved from personal responsibility for the management of the enterprise.

3. Purposes of Incorporation

By the nature of corporation law, corporations must be organized for some one or more specified purposes. In case of corporations formed by special act of legislature the purpose or purposes are stated in the act which establishes the corporation. In case of corporations formed under general statutes the objects of incorporation are stated in the charter. In no case, however, may corporations be formed which have as their object that which is contrary to the constitution of the state or nation. Consequently, the expression in the articles of any illegal object would prevent the formation of a corporation. It is also impossible to incorporate with the object of accomplishing some legal end by illegal means. In this connection it should be remembered that by illegal is here meant that which is *ultra vires* or beyond the power of the corporation, not that which is expressly prohibited by law. Thus a corporation formed with the stated object of dealing in grain, but whose real purpose was to speculate in futures, was held void. *McGrew* v. *City Produce Exch.*, 851 Tenn. 572. Corporations which are against public policy are void. An illustration is found in the Standard Oil Trust case, where the trust was declared void because it sought to control both production and prices. *State* v. *Standard Oil Co.*, 49 Ohio St. 137.

Frequently reference to the purposes of incorporation is found in the statute. Sometimes the statute specifies for what purposes corporations may be organized and adds "or for any other lawful object," or similar expression. Such general expressions are not to be interpreted as meaning any

lawful purpose whatever, but as referring to objects of like nature to those specified.

It is a universal requirement that the objects of the corporation be stated in the application for a charter. The extreme importance of securing a correct statement of the object or objects of the proposed corporation is evident from the fact that in case any question arises as to the authority of a corporation to act in certain ways the provisions of the charter are the sole criterion for judging of the legality of such act. For this reason it is important that a correct and comprehensive statement of the purposes of the corporation be secured in the application for a charter. This has been explicitly stated as follows: "The law requires the articles of association to state distinctly and definitely the purpose for which the same is formed. If it does not state a purpose for which the statute authorized a corporation to be formed, it would not be legally incorporated, and its articles would afford no warrant for the exercise of corporate action. If it does state such a purpose, and if the other requirements of the law are complied with, it is a legal corporation, and authorized to act as such. In either case the articles themselves are the sole criterion to ascertain the purpose for which it was formed, and the intent must be gathered alone from the written instruments, and can not be aided or varied or contradicted by testimony or averments *aliunde* the instrument itself." *Atty-General* v. *Lorman,* 59 Mich. 157.

In most states a corporation may not be authorized for more than one purpose. In such states the statute usually specifies the objects of incorporation, but by employing the word "or" between them makes it clear that it is the intention that but one may be made the purpose of any particular corporation. In some states, however, a more liberal attitude is taken, by permitting a corporation to engage in two or more lines of diverse activities. New Jersey, Kansas and Louisiana are in this group.

Where the purpose or purposes of a corporation are definitely stated the courts are usually liberal in interpreting

the law. Thus where the Michigan law authorized the incorporation of manufacturing enterprises, it was held that a corporation which was formed to provide natural ice to be used as an article of consumption was a valid corporation. *Atty.-General* v. *Lorman,* 59 Mich. 157. The charter of a corporation provided that its purpose was to build and maintain an opera-house and lecture hall, in order to aid in the literary and scientific education of the people. It was held that, under the statute permitting corporations to be organized for the support of any literary or scientific undertaking, or the promotion of music, such statement of purposes was sufficient, hence the corporation was a valid one. *Seymour Opera-House Co.* v. *Wooldridge,* 31 S. W. 234.

However, there is a limit beyond which the provisions of the law cannot be stretched in the willingness of courts to legalize attempted incorporations. It was held that a statute authorizing the establishment of corporations for literary, scientific and charitable purposes did not confer the right to incorporate a rifle club. *Vredenburg* v. *Behan,* 33 La. Ann. 627. It was held that a statute authorizing the incorporation of societies and clubs did not authorize the formation of a corporation whose purpose was the improvement of its members in an art and their mutual protection. *In re Carpenters'* etc. *Union,* 17 Abb. N. Cas. (N. Y.) 109.

4. De Jure and De Facto Corporations

When a corporation complies exactly with all requirements of the state law relative to its organization it is known as a corporation *de jure.* If, however, its organization is defective from a legal point of view to such an extent that it cannot be recognized as having a legal existence, it may nevertheless be recognized as a *de facto* corporation. Fletcher, *Private Corporations,* Sec. 278, says: "The rule laid down by a majority of decisions seems to be that the essential requisites of a *de facto* corporation are: first, the existence of a charter or law under which a corporation with the powers assumed might lawfully exist; second, an effort

in good faith to incorporate thereunder; and third, an actual use or exercise of corporate powers; and that there is such a corporation when the existence of these requisites is shown, notwithstanding irregularities or defects in the organization, or a failure to comply in all respects with the provisions of the charter or statute."

Sometimes it may be shown that a corporation does not possess even a *de facto* existence, and that the stockholders are in reality partners. In this and similar instances the determination of the exact nature of a corporation is a matter of great importance.

There are instances in which a concern which does not enjoy even a *de facto* existence may be held to be a corporation by estoppel. Thus if persons deal with a corporation as such they may later be estopped from denying its corporate existence.

5. Relation of Corporation to Stockholders

A corporation is an entity distinct from its stockholders. This is true regardless of the number of stockholders. It follows that a stockholder cannot do business for the corporation by acting in his own name. Even where one stockholder owns all of the stock of a corporation, the separate identity of the corporation is generally recognized, and such stockholder must act through the usual corporate channels, not as an individual.

The reverse is also true, so that the acts of a corporation do not in any way bind the stockholders as individuals. It follows that a corporate debt cannot be collected from the stockholders, unless by some special contract they have made themselves liable for the corporation's debts.

The legal fiction that a corporation is an entity distinct from the stockholders breaks down when injustice results from an attempt to maintain it. As a rule courts of law do not look beyond the fiction of corporate entity, but courts of equity do, and in certain instances their assistance may be required. As a rule, it may be said that a corporation will

be looked upon as an entity only so long as justice is accomplished by doing so, and that when the corporate form is used as a cloak for fraudulent activities it will be regarded as an association of individuals. 142 *Fed.* 247; 49 Ohio St. 137.

6. Kinds of Corporations

Corporations may be classified in various ways. When contemplated in their relation to the state they may be classified as:

1. Public
2. Quasi-Public
3. Financial
4. Private

Public corporations comprehend all political divisions of the state, as, townships, cities, counties, and so forth.

Quasi-public corporations comprehend the so-called public utilities—railroads, telephone and telegraph companies, gas companies, street railway and electric interurban companies, water companies, as well as other possible types. The extensive development of the utilities has given rise to problems of regulation and now practically all states have public service commissions engaged in the study of problems arising in connection with such regulation.

Financial corporations include banks and insurance companies. These are incorporated under separate laws and are supervised by departments of the state governments organized for that purpose.

Private corporations include the great body of corporations engaged in manufacture and trade. As a group these are freer from state control and interference than are the other groups.

7. Classification of Corporations under New York Law

The classification below is derived from the General Corporation Law of New York, Laws of 1909, Chapter 28:

A corporation shall be either,

1. A municipal corporation,
2. A stock corporation, or
3. A non-stock corporation.

A stock corporation shall be either,

1. A moneyed corporation,
2. A railroad or other transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either,

1. A religious corporation,
2. A membership corporation, or
3. Any corporation other than a stock corporation.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations heretofore formed belonging to such a class.

8. Corporations Defined in New York Law

The following definitions are derived from the same source:

A "municipal corporation" includes a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.

A "stock corporation" is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

The term "non-stock corporation" includes every corporation other than a stock corporation.

A "moneyed corporation" is a corporation formed under or subject to the banking or the insurance law.

A "domestic corporation" is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation which is not a domestic corporation is a foreign

corporation, except as provided by the code of civil procedure for the purpose of construing such code.

The term "directors," when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

The term "certificate of incorporation" shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

The term "member of a corporation" shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

The term "office of a corporation" means its principal office within the state, or principal place of business within the state if it has no principal office therein.

The term "business of a corporation," when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

The term "corporate law" or "laws," when used in any law forming a part of the consolidation of the general laws of the state of which this chapter is a part, means the general statutes of this state relating to corporations included in such consolidation.

9. Stock and Non-Stock Corporations

All corporations may be classified as stock or non-stock. Stock corporations include practically all of those engaged in business for a profit. Ownership in them is represented by shares of stock. Non-stock corporations comprise such non-profit making organizations as churches, clubs and societies.

In most states it will be found that separate laws have been passed to control these two groups of corporations.

10. Domestic, Foreign and Alien Corporations

In the state of incorporation corporations are designated as domestic. In states other than that of incorporation, they are designated as foreign. Those incorporated in other countries are called alien.

In any state foreign and alien corporations are treated alike, except in times of war and in connection with Federal taxes.

Interesting situations arise where corporations organized in one state engage in business in another state. This may consist in doing business from the state of incorporation to some point within another state, or it may consist in doing business from one point in a foreign state to some other point in that state. Two distinct situations thus arise. In the first instance the foreign state cannot prohibit the transaction, while in the latter instance it can. In the first instance there exists interstate commerce which is regulated exclusively by the Federal government.

It is the custom for states to permit foreign corporations to do business within their boundaries providing they comply with the local laws regarding taxation and the filing of specified documents. They may be compelled to designate an agent against whom legal papers may be served.

II

FORMS OF ORGANIZATION OTHER THAN CORPORATE

1. Introductory

Various considerations determine the specific form of organization desirable in a given instance. Among these are:

1. Amount of capital required
2. Method of distribution of risk
3. Nature and size of enterprise in question
4. Methods of control to be exercised
5. Division of profits, etc.

The present situation is the outgrowth of a long development. The form of organization most popular at any given time is a corollary of the status of business at that time. In the present stage of development many industries still adapt themselves to the sole proprietorship form of organization, while others have outgrown it.

2. Individual Proprietorship

In this simple form of organization one man acts as sole proprietor and sole risk taker. Even where this essential feature exists, there may be wide variation in internal management. The sole proprietor risks property other than that invested in the enterprise in question, hence oftentimes finds it desirable to change to some form of organization which limits his liability, such as the corporation or Massachusetts Trust. Other reasons for abandoning this form of organization are (*a*) lack of adequate capital and (*b*) desire for a form of internal organization better adapted to modern conditions. These are corollaries of modern industrial development.

3. Partnership

A general partnership exists whenever two or more persons associate together to carry on business. Although neither oral nor written contract is necessary to constitute such an association a partnership, such a contract usually does exist.

Each partner acts as general agent for the enterprise, being able to contract in the firm name. The power possessed by the individual partner renders essential careful consideration before entering into a partnership agreement.

The partnership relationship being a personal one, partners cannot delegate their authority and a partner cannot transfer his partnership interest to another person. It follows that death, bankruptcy or insanity of a partner necessitates the liquidation of his interest.

Partners are jointly and severally liable for the partnership debts, except in case of special provision to the contrary. Consequently, partners are liable to the extent of their private fortunes for such debts.

Partners share profits and losses equally, except where an agreement exists to the contrary.

In the liquidation of a partnership the distribution is made in the following order:

1. Outside creditors
2. Debts to partners
3. Capital investment
4. Profits

In some states limited partnership laws have been passed. When a partnership is organized in accordance therewith, and the contract is filed in accordance with the requirements of the law, the partners designated therein as special partners are limited in liability to the amount they have invested in the business. Strict compliance with the law is essential if the limited liability feature is to be assured.

The limited partnership laws of the various states of the United States having such laws are, in a general way, modeled after Louisiana limited partnerships, which are based on the civil law.

Outside the state under the laws of which the limited partnership is organized it is regarded as a general partnership, hence the limited liability feature does not there apply to the special partners. To secure the status of limited liability for special partners in such states certificates must be filed therein and the local laws complied with in all respects.

For forms see S. Gordon's *Annotated Forms of Agreements*. Form 334.

4. Joint Venture

The joint venture possesses the essential characteristics of the partnership, differing therefrom in that it is usually organized for the accomplishment of a specific purpose, its life being terminated when such purpose is accomplished. It is customary to submit the sole responsibility for management to one person known as the manager.

5. Joint Stock Company

Under this form of organization the members are jointly and severally responsible for firm debts, but the capital is divided into transferable shares. Consequently the continuity of existence of the firm is not disrupted by the death, bankruptcy, or insanity of a partner. The joint stock company is essentially a partnership. It is not incorporated, and pays no organization tax. In New York, unlike other states, joint stock companies must file with the Secretary of State and the county clerk a certificate showing:

1. Name of company
2. Place of business
3. Date of organization
4. Number of shareholders
5. Names and addresses of officers

In New York joint stock companies must pay an annual franchise tax, as do corporations, but this is not the rule in other states. The joint stock company differs from the

partnership in that the members cannot act for it; only such agents as are authorized can do so. Also, in New York, the joint stock company may hold real estate in the name of its president, and may mortgage it as do corporations. Also suits are brought by or against the president of the joint stock company, and it is only after it has been shown that a claim cannot be collected from the company that action may be had against the individual partners.

Several large express companies were organized under the New York Joint-Stock Company law.

In states other than New York the joint stock company form of organization is little used because of the unlimited liability feature, incapacity of the company to hold real estate in its own name and necessity of bringing suit in the names of all partners.

The unlimited liability feature renders impossible the wide distribution of stock to the investing public.

Any conveyance of real property must be executed in the names of all the partners, unless this procedure is obviated by having someone, usually an officer of the company, act as trustee, in which case all real estate is held and transferred in his name.

The joint stock company may serve as a suitable substitute for the close corporation where, for certain reasons, the latter form of organization is found objectionable.

Outside New York State the joint stock company possesses the following advantages:

1. It pays no organization or annual franchise taxes, nor is it required to file a certificate or annual reports.
2. It may do business in states other than that of its formation without the formalities of filing certificates and paying franchise taxes.

Questionable attempts are sometimes made to limit the liability of members of a joint stock company. To illustrate, the following is quoted from the articles of agreement of the Pierce Fordyce Oil Association (Quoted in Gerstenberg: *Finan. Org. and Management,* p. 53):

The Board of Governors shall have no power to bind the shareholders or members personally; and in every written contract or undertaking they shall enter into relating to the business of this Association, its property or any part thereof, reference shall be made to this agreement; and the person, firm or corporation so contracting with the Board of Governors shall look only to the funds and property legal and equitable of this Association for the payment of any debt, damage, judgment or decree or of any money that may become due and payable in any way by reason of the contract or undertaking, and neither the Board of Governors nor the shareholders or members present or future shall be personally liable therefor or for any debt incurred or engagement or contract made by said Board of Governors.

In New York it has been held that a stipulation in the bonds of the Adams Express Company against the personal liability of members was against public policy, hence void. *Hibbs* v. *Brown,* 190 N. Y. 167.

In most states, however, the inclusion of such a provision in a contract would adequately protect the stockholders against personal liability.

The Federal Income Tax Law includes joint stock companies under the term "corporation." Reg. 69, Arts. 1502-3, defines joint stock companies as follows:

Art. 1502. *Association*—Association and joint-stock companies include associations, common law trusts, and organizations by whatever name known, which act or do business in an organized capacity, whether created under and pursuant to State laws, agreements, declarations of trust, or otherwise, the net income of which, if any, is distributed or distributable among the shareholders on the basis of the capital stock which each holds, or, where there is no capital stock, on the basis of the proportionate share or capital which each has or has invested in the business or property of the organization. A corporation which has ceased to exist in contemplation of law but continues its business in quasi-corporate form is an association or corporation within the meaning of section 2.

Art. 1503. *Association distinguished from partnership.* An organization, the membership interests in which are transferable and the business of which is conducted by trustees or directors and officers without the active participation of all the members as such, is an association and not a partnership. The term "partnership" means only ordinary partnerships, and organizations

which have a fixed capital stock divided into shares represented by certificates transferable only upon the books of the company, which manage their affairs by a board of directors or executive officers, and which conduct their business in the general form and mode of corporations are joint-stock companies or associations within the meaning of the statute even though under State law such organizations are technically partnerships.

6. Partnership Associations

Pennsylvania and Michigan provide by statute for limited partnership associations. These resemble corporations in that they are creations of the state, filing a certificate of association with the secretary of state and county clerk and paying an organization tax. An annual franchise tax is paid and reports are filed annually. Ownership is represented by shares of stock, and the affairs of the association are carried on by a board of directors elected by the shareholders.

A purchaser of shares of an association must be elected to membership in the association before he can vote or participate in management. Should he fail of such election his interest in the association must be bought out, either (*a*) by coming to an agreement as to the price or (*b*) by an appraisal under court supervision.

In both Michigan and Pennsylvania contracts made by the association involving sums of over $500 must be signed by two managers in order to bind the association.

To avoid personal liability on the part of members of the association, the statutes authorizing such associations must be strictly complied with.

It appears that the limited liability feature applies only in the state of organization, and that in other states these associations are regarded by the courts as general partnerships. Consequently concerns engaged in interstate business should avoid this form of organization.

To form such an association in Pennsylvania, three or more persons must file the certificate of incorporation with the county recorder.

In Michigan the procedure is similar to that of incorpora-

tion. Three or more persons must sign and acknowledge the articles of association, giving their full names and the amount of capital each subscribes; the total capital; nature of the business; location; name, to which must be attached the word "limited;" duration, which cannot exceed 20 years; and the names of the officers. This is filed in the office of the secretary of state and of the county recorder.

In electing directors, in Michigan, cumulative voting is provided for.

7. Legal Status of Limited Partnership Associations

In Michigan limited partnership associations are governed primarily by the law of corporations whereas in Pennsylvania the distinct law of limited partnership applies, although the courts have held that to determine the true legal status of these associations resort should be had to both corporation and partnership law. *Carter* v. *Producers' Oil Co.*, 182 Pa. St. 551.

The Supreme Court of the United States has refused to hold a Pennsylvania partnership association as a corporation. *Great Southern Hotel Co.* v. *Jones*, 177 U. S. 449. A similar ruling has been made by the Supreme Court of Massachusetts. *Edwards* v. *Warren Linoline*, etc., 168 Mass. 564.

The legal status of limited partnership associations, at least in all states outside that of their organization, is so doubtful that their desirability is questionable.

8. Massachusetts Trust

Various other ways of designating this form of organization are: business trust, association under deed of trust, voluntary association formed under deed of trust, and common law trust. It originated, and has had its chief development in Massachusetts, where corporations organized to deal in land were prohibited previous to 1912.

Suspicion against land-owning corporations is long stand-

ing in English legal history, being based on the fear that if companies were permitted to own land they might continue to accumulate it until they overpowered the government.

The principle underlying the trust consists in placing the legal title to property in one person (trustee) and the equitable title in another (beneficiary). This idea is rather widely applied in wills when it is desired to create trusts for the benefit of certain persons or institutions. It was formerly extensively employed to effect centralized control of two or more corporations.

Massachusetts trusts have as their essential characteristic a contract between the trustee and the beneficiaries, the latter representing present investors or owners as well as prospective future investors. The interest of such owners is represented by certificates of stock. These resemble ordinary stock certificates in that they are bought and sold, and possess such qualities as preferences as to earnings. The trustees correspond to the directors of a corporation; the certificate holders, to the stockholders. The trustees appoint the officers.

Most states limit the duration of express trusts, a common provision being that it shall not be more than 21 years 9 months after the death of one or two persons named when the contract was made. The parties are, of course, free to organize a new trust.

But few states have as yet undertaken the regulation of express trusts. Among these are Massachusetts, New York and Oklahoma. See *Cons. Laws of Mass.*, Ch. 182; also *Session Laws of Oklahoma,* 1921, Ch. 16.

The law of Massachusetts requires that the trust deed must be filed with the commissioner of corporations and with the clerk of every city or town wherein the trust does business. In Massachusetts the filing fees for trusts are less burdensome than for corporations. In other states no organization tax is paid.

The trust is more flexible than the corporation in that it is not restricted as to the amount and classification of stocks

and bonds which it may issue. It may have any number of trustees; these are not required to meet residential requirements, and they may meet in any state.

The management of trusts is somewhat more permanent than that of corporations. The latter usually elect some new directors each year, and while the same control may be prolonged through the agency of the voting trust, the duration of such trust is limited. The management of a common law trust is, on the other hand, for practical purposes, permanent.

The trust possesses greater flexibility than the corporation as regards the nature of the activities in which it may engage. In this respect it is like the proprietorship and the partnership. The deed of trust contains the only restrictions in this respect, but since this is prepared by the persons primarily interested it is not likely to contain any unduly prohibitive clauses.

Some states, by limiting certain types of activities to corporations, tend to suppress the operation of express trusts to that extent.

Trusts are free from all forms of regulation affecting corporations, and the increase in burdensome restrictions aimed at certain classes of corporations may tend to drive them to adopt the less formal organization of express trusts as a protective measure.

Trusts are not subject to the requirement placed on corporations of filing certificates and paying franchise taxes in each state in which they do business.

Trustees, in managing the affairs of the trust, are responsible for the results and must exercise the "judgment of an ordinarily prudent man." However, they may be held only for gross errors and negligence if a provision to that effect is inserted in the trust deed. They cannot use the property of the trust for objects not specified in the trust deed.

Trustees, to avoid personal liability, must make it clear that they are acting for the trust, when dealing with outsiders. For this reason it is customary in making contracts with outsiders, to stipulate therein that the creditor must

look only to the property of the trust for the satisfaction of his debts, never to the personal estates of the trustees.

While directors of corporations do not, as a rule, receive any compensation unless specific provision is made therefor, trustees are entitled to reasonable compensation for their services, unless the trust deed contains a provision to the contrary.

Creditors of a trust must look to the property of the trust for satisfaction of their debts, never to beneficiaries since the latter are not personally liable for the debts of the trust. It is sometimes of great importance to ascertain whether a given enterprise is a trust or a partnership. If the members actively participate in the business this in itself constitutes a partnership. Such active participation may take the form of the right to control the trustees by election and removal, or it may take the form of the right of actual management. The test is: are the trustees free to act as principals? If so, a trust exists, and the beneficiaries are not personally liable as are partners. If a trust does exist the shareholders are limited in their powers of control to the right to compel the trustee to account and to remove him for dishonesty or negligence.

If the trust deed contains a provision to the effect that the trustees and shareholders can never be held liable as partners and third parties have notice thereof, the provision will hold in case of such third parties, even though the trust be actually a partnership.

The trustees declare dividends in accordance with the provisions of the trust deed, and in this respect their powers correspond rather closely to those of the directors of a corporation.

The express trust has been brought into considerable disrepute because of its employment in certain wildcat ventures in oil production. The misuse of this form of organization should not be regarded as an inherent defect.

Certain lawyers have likewise brought this form of organization into disrepute by attempting to exploit it in the crea-

tion of "cheap" concerns, i. e., companies organized according to set forms, without regard to individual requirements.

The creation of a Massachusetts Trust is accomplished by drafting and executing a deed of trust, this consisting of a contract between the trustee on the one hand and the beneficiary or beneficiaries on the other. Such beneficiaries may be regarded as representing those who at a later date may become interested, as, by buying out some beneficiary's interest.

The interest of a beneficiary in a trust is represented by a certificate of stock of a corporation. They may be bought and sold on stock exchanges, and sometimes are divided into several classes of common and preferred shares.

The deed of trust prescribes the powers of the trustees and outlines the nature of the business. The trustees are usually empowered with the appointment and removal of officers and employees. They adopt a name for the business, instead of conducting it in their names. The name is usually stated in the trust deed.

Customarily, also, a seal not unlike that of a corporation is used.

Relative to payment of dividends, the trust deed usually grants wide powers to the trustees, similar in most respects to those granted the board of directors of a corporation.

Among well known concerns employing the trust form of organization are:

Amoskeag Manufacturing Co.
Associated Simmons Hardware Cos.
Chicago Elevated Railways
Mackay Companies
Massachusetts Gas Cos.
Great Northern Iron Ore Properties
Massachusetts Lighting Cos.
Montgomery Ward Warehouse
North American Pulp and Paper Co.

The trust deed usually provides that no personal liability shall attach to stockholders or trustees.

According to the Report of the Massachusetts Tax Com-

missioner upon Voluntary Associations, Jan. 17, 1912, this form of business organization, after 25 years of experience, has proven safe and unobjectionable. The report states that it is more flexible than the corporation as well as more economical. It is well adapted to the development of real estate, by insuring a continuity of management not possible in case of corporations, the trustees not being changed as often as the directors of a corporation.

The trust has certain defects. It is governed largely by precedent, and the rules established by court decisions are by no means uniform. Moreover, if the use of the trust grows, legislatures may seek means of curbing and controlling them, in spite of the fact that their unincorporated form makes an attempt difficult. In 1913 Massachusetts passed an act to punish trustees of voluntary associations who do not file reports with the Commissioner of Corporations, as well as one to provide for the publication of such reports. *Gen. Acts Mass.* 1913, 376, 507.

It is difficult to determine the exact legal status of the Massachusetts trust. See *Ill. Law. Rev.*, 482 (1918). That they are legal has been decided long since. *Phillips* v. *Blatchford,* 137 Mass. 510 (1884). Subsequent decisions have served to confirm this. See 140 Mass. 346; 168 Mass. 566; 174 Mass. 491; 185 Mass. 202.

The Declaration of Trust of Western Massachusetts Companies is shown in Form 1 as follows:

FORM 1

DECLARATION OF TRUST OF
WESTERN MASSACHUSETTS COMPANIES

This DECLARATION OF TRUST is made at Boston in the County of Suffolk and Commonwealth of Massachusetts this fifteenth day of January, 1927, by GEORGE W. LAWRENCE of Greenfield, ALVAH CROCKER of Fitchburg, W. RODMAN PEABODY of Milton, ALFRED L. RIPLEY of Andover, CHARLES W. HAZELTON of Montague, ARTHUR W. WOOD of Arlington, CHARLES WALCOTT of Cambridge, MOSES WILLIAMS of Needham, CHARLES STETSON

of Boston, J. PRESTON RICE of Newton, all in the Commonwealth of Massachusetts, SAMUEL FERGUSON of Hartford in the State of Connecticut and JONATHAN BULKLEY of New York in the State of New York, who are hereinafter called the Trustees, and said expression shall extend to and include the Trustees for the time being hereunder appointed as hereinafter provided, and the word "Trustee" as hereinafter used shall apply to any one of the said Trustees where the context so admits.

WHEREAS, it is desired to create under and in accordance with the provisions of this instrument a voluntary association for the acquisition of property and the conduct of business as hereinafter set forth, consisting, first, of the Trustees, in whom shall be vested the legal title to all property at any time belonging to said association except as hereinafter provided and who shall manage, control and carry on the affairs of the association as hereinafter set forth, and second, of the persons (hereinafter called the Shareholders) who shall from time to time be the holders of certificates of beneficial interest, known as shares, to be issued as hereinafter provided, in whom shall be vested the entire beneficial interest in all property belonging to the association and all business conducted by it and all profits earned by it, and

WHEREAS, it is proposed that in the first instance said Trustees shall acquire at least a majority of the outstanding common stock of Turners Falls Power & Electric Company, a corporation of Massachusetts, and as much more of the common stock of said corporation as may be deposited under and within the time permitted by a deposit agreement of even date herewith, the parties to which are said Trustees, The Merchants National Bank of Boston and such of the stockholders of said corporation as shall so deposit their shares, and that the Trustees shall issue in exchange for said stock shares of this association as hereinafter and in said deposit agreement provided;

NOW, THEREFORE, this declaration of trust WITNESSETH that said George W. Lawrence, Alvah Crocker, W. Rodman Peabody, Alfred L. Ripley, Charles W. Hazelton, Arthur W. Wood, Charles Walcott, Moses Williams, Charles Stetson, J. Preston Rice, Samuel Ferguson and Jonathan Bulkley for themselves, their heirs, executors, administrators, successors and assigns, do hereby declare that they and their successors from time to time, as Trustees hereunder, will hold, manage and dispose of the aforesaid property, if and when acquired by them, and all such other property as may be hereafter transferred or conveyed to them as Trustees hereunder, or otherwise acquired and held on behalf of the association as hereinafter provided (all of said property at any time

and from time to time so held being hereinafter collectively referred to as the "trust estate"), in trust to hold, manage and control said trust estate and receive the income thereof and to dispose of the same for the benefit of the Shareholders according to the number and kind of shares held by them respectively, and with and subject to the powers and provisions hereinafter contained concerning the same.

Business Name of Trustees

(1) The Trustees in their collective capacity shall be designated "Western Massachusetts Companies" and in so far as may be practicable all the business of the association shall be done and all its affairs conducted in and under that name, to the end that legal title to the entire trust estate except as otherwise provided herein and in any event the absolute control thereof shall be at all times vested in the Trustees, and that all obligations incurred by or in behalf of the association shall be the obligations of the Trustees only and not of the Shareholders but enforceable against the Trustees as hereinafter provided, only as such trustees, and only to the extent of the trust estate in their hands and possession and never against them or any of them in their individual capacity or capacities.

Number, Election, Qualification, Resignation and Compensation of Trustees

(2) The Trustees hereunder shall be twelve (12) in number until a different number shall be fixed by the Shareholders or the Trustees as hereinafter provided and thereafter shall be such number as shall be fixed from time to time by the Shareholders or the Trustees as hereinafter provided. At any annual meeting of the Shareholders or at any special meeting of the Shareholders called for the purpose, such number may be at any time and from time to time increased to such number as may be fixed by a vote of two-thirds (⅔) of the number of Shares then outstanding hereunder of such class or classes as then have general voting power, and at any annual meeting of the Shareholders such number if then greater than nine (9) may be reduced by a similar vote to any number not less than nine (9). Until the Shareholders have made for the first time a change in the number of Trustees, but not thereafter, the Trustees themselves may from time to time increase their number to any number not greater than seventeen (17) by a majority vote of all the Trustees then in office.

(3) The Trustees herein named shall hold office until the annual meeting to be held in the year 1928, and every trustee hereafter elected shall hold office until the annual meeting of the Shareholders next succeeding his election, and in either case all such trustees shall continue in office even after the annual meeting in question until the succeeding board of Trustees has been elected as hereinafter provided, and until at least a majority of said such succeeding board is qualified to act as hereinafter provided.

(4) At each annual meeting of the Shareholders they may elect a new board of Trustees for the ensuing year of such number as may be then fixed as hereinbefore provided, and any one or more of all of the Trustees previously in office may be re-elected to the new board, and at any special meeting at which the number of Trustees is increased as hereinbefore provided the Shareholders may elect the additional Trustees so provided for, but no Trustee shall be so elected unless he receives the affirmative votes of at least a majority of the number of shares then outstanding hereunder of such class or classes as then have general voting power, and if the full number to be elected at the meeting in question shall not be elected in said manner there shall be no election at all at said meeting and any increase in the number of Trustees voted at such meeting shall be void and of no effect. If the Trustees shall increase their own number as provided in Article 2 they shall thereupon elect the additional Trustees so provided for.

(5) Every Trustee elected by the Shareholders or by the Trustees as provided in Article 4 or to fill a vacancy as provided in Article 7 shall be required, except in case of re-election, to qualify as such trustee by signing, sealing and acknowledging, and depositing with the Secretary of the association within twenty (20) days after his election a written statement containing a declaration of his acceptance of such election and of the trusts, duties and obligations hereby imposed upon him as such trustee. If at the expiration of twenty (20) days after any annual meeting at which Trustees are elected less than a majority of all the Trustees so elected shall be qualified to act as herein provided, said election shall become null and void and the former Trustees shall continue in office as provided in Article 3. In other cases of failure to qualify, the election of that one or those so failing shall alone become null and void and each such failure shall create a vacancy to be filled as provided in Article 7.

(6) Any Trustee may resign by presenting his written resignation at a meeting of the Trustees or by delivering the same at the principal office of the association addressed to the President or

Secretary of the association, but such resignation shall take effect only upon its acceptance by the Trustees or by the election of a new Trustee in the place of the Trustee so resigning, or upon the expiration of twenty (20) days after the presentation or the delivery of such resignation, whichever event shall first occur, and after such resignation, until it takes effect as aforesaid, the resigning Trustee may, but shall not be obliged to, act as trustee hereunder.

(7) In case of any vacancy in the board of Trustees occurring by the death, resignation or failure to qualify of any Trustee a new Trustee to fill such vacancy shall be elected by the remaining Trustees and such vacancy may be so filled even if such remaining Trustees shall be less than a majority of the whole board.

(8) Whenever any change of Trustees shall take place hereunder either by the death or resignation of any Trustee or Trustees or by the election of a new board of Trustees or of any additional Trustee or Trustees, the title to the entire trust estate as previously vested in the former Trustees shall immediately vest in the Trustees holding office as a result of such change without any conveyance from any outgoing Trustee or Trustees or from the heirs, executors or administrators of any deceased Trustee or Trustees or from the continuing Trustees or any of them; but notwithstanding this provision, it shall be the duty of each outgoing Trustee, of the heirs, executors or administrators of each deceased Trustee and of each continuing Trustee, to execute, acknowledge and deliver such instruments of conveyance as shall be deemed by the Trustees advisable and appropriate for the purpose of confirming the title vested as aforesaid in the Trustees then holding office.

(9) The Trustees shall receive for attendance at meetings such reasonable compensation as the Trustees may determine, and if any Trustee shall be called upon to travel or perform other extra services he may be paid his expenses and such special remuneration as the Trustees may determine.

Conversion of Trust Estate into Cash

(10) It shall be the duty of the Trustees at or before the termination of the trust hereby created to sell and convert into cash the entire trust estate and no Shareholder shall have or acquire at any time any interest in the specific property, real or personal, at any time forming part of the trust estate, or any right to any division or partition thereof or any other rights with reference thereto, except to have said property dealt with as herein provided,

to receive dividends therefrom, as herein provided, and to share in the distribution of the cash proceeds thereof upon the termination of the trust, except that the Trustees in the exercise of their uncontrolled discretion may, if they see fit, at the termination of the trust retain and distribute in kind as hereinafter provided, all or any part of the personal property forming a part of the trust estate.

Business Powers of the Trustees

(11) Until the termination of the trust hereby created, the Trustees in the control and management of the trust estate and in the conduct of the business of the association shall have power at any time and from time to time, subject however to the limitations and conditions herein contained in this or any other article hereof:

(*a*) To subscribe for or to acquire by purchase for cash or in exchange for shares of the association or otherwise and for such price and upon such terms as the Trustees may in their uncontrolled discretion determine, stocks, shares, rights, bonds, notes or other securities or obligations of any corporation, trust or association, which is engaged in whole or in part in the business of manufacturing, generating, producing, transmitting, selling, distributing, or dealing in, electrical energy, artificial gas, or water power, in the Commonwealth of Massachusetts; or of any other corporation, trust or association of whatever nature and wherever situated if in such case last mentioned the Trustees shall determine that such acquisition would increase the value of or protect the investment of the Trustees in the securities already held of any Massachusetts corporation, trust or association of the kind described in this paragraph either by reason of direct or indirect connection between the two companies or for any other reason deemed by the Trustees sufficient.

(*b*) To manufacture, generate, produce, transmit, purchase, sell, distribute and deal in electrical energy, artificial gas, or water power, and for the aforesaid purposes or any of them to acquire by purchase for cash or in exchange for shares of the association, or otherwise, and to lease, and to hold, develop, construct, erect, maintain, conduct, operate, manage under contract and otherwise utilize real estate, or any rights or interests therein, water rights, water power or privileges, buildings, plants, systems, machinery or any other things suitable for said purposes or any of them.

(*c*) To sell at public auction or by private contract, or

otherwise, the whole or any part of the trust estate, free and discharged of the trusts hereunder, to any person or persons in such manner and for such price or consideration upon time or otherwise, and subject to such restrictions and agreements as they may in their uncontrolled discretion determine and without the necessity of applying to any court or to the Shareholders hereunder for leave so to do, and to buy in or rescind or vary any contract of sale and to resell without being responsible for loss, and to convert, exchange or refund the whole or any part of the trust estate for or into any shares, bonds or other securities or obligations, property or effects in which the Trustee might, under the provisions hereof, invest any moneys forming a part of the trust estate, and, without limiting the generality of the foregoing, to sell the whole or any part of the trust estate for any shares, bonds or other securities or obligations of the purchaser, as a step in proceedings looking towards the termination of the trust hereby created, or the carrying out of any plan for the reorganization or rearrangement of the business or properties conducted or held hereunder, provided however that the Trustees shall not so sell, except upon or in connection with the termination of the trust hereby created, any shares of the stock of any corporation, trust or association of which a majority in interest is then held as a part of the trust estate, unless such sale shall have been authorized by the Shareholders at a meeting called for that purpose, by a vote of at least a majority in number of all the shares then outstanding hereunder of such class or classes as then have general voting power.

(*d*) To borrow money and to issue bonds or other obligations therefor and to secure the payment thereof by mortgage, pledge or specific charge of the whole or any part of the trust estate then owned or thereafter acquired, except that no such bonds or other obligations maturing more than one year after the date thereof shall be issued, and no such mortgage, pledge or specific charge shall be created unless authorized in each and every such case by a vote of at least two-thirds (⅔) in number of all the shares then outstanding hereunder of such class or classes as then have general voting power.

(*e*) To advance or lend money on such terms as they shall think proper, with or without security, to any corporation, trust or association of which any of the stocks, shares, bonds or other securities or obligations shall constitute a part of the trust estate and to any other person, corporation, trust, firm or association of any description whenever in their opin-

ion such action is necessary or convenient in the business or conducive to the advantage of the association, and to discharge and cancel without payment any indebtedness thus arising, or to convert the same into stocks, shares, bonds or other obligations of such corporation, trust or association or of any other with or into which it may be consolidated or merged or to which its property may be transferred or leased or by which its capital stock may be owned.

(*f*) To exercise any and all powers and rights belonging to the holder of any stocks, shares, bonds or securities or obligations forming a part of the trust estate whether by voting or by giving any consent, request or notice or otherwise and either in person or by proxy or attorney and to give proxies or powers of attorney therefor with or without power of substitution, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting, meetings or action and may include the exercise of any discretionary powers, and without limiting the generality of the foregoing, to vote in favor of or to consent to the creation of any mortgage, lien or other encumbrances upon all or part of the franchises and property then owned or thereafter acquired of any or all of the corporations, trusts and associations by which said stocks, shares, bonds, securities or obligations were issued, or to vote in favor of or to consent to the merger or consolidation of such corporation, trust or association with any other corporation, trust or association or for the sale, lease, surrender or abandonment of all or any part of the franchises and property of any such corporation, trust or association.

(*g*) To cause any stocks, shares, bonds or other securities or obligations subject to these trusts to be transferred into the name of Western Massachusetts Companies or into the names of the Trustees or any one or more of them or to remain in or be transferred into the name of any other person, firm, association, trust or corporation and in any such case in such manner as not to give notice that the same are affected by the trust hereby created or by any trust, and to be deposited for safe keeping in such place and in such manner and subject to such control or joint control as they may deem proper.

(*h*) To cause any real estate at any time acquired on behalf of the association to be acquired and held for the association by such special trustee or trustees, and under such form of agreement or declaration of trust, and with such provisions for the resignation or removal of such special trustee

or trustees and the appointment of his, its or their successors as the Trustees may determine, but subject in all cases to the absolute right of the Trustees to control and direct the use, management, sale, mortgage, lease or other dealing with or disposition of said real estate.

(*i*) To collect, sue for, receive and receipt for all sums of money coming due as a part of the trust estate, to consent to the extension of the time for payment, or to the renewal of any bonds or other securities or obligations belonging to the trust estate and to compound, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands and things relating to the trust estate, and to transfer to and deposit with any corporation, committee or other persons any stocks, shares, bonds or other securities or obligations forming part of the trust estate for the purposes of any arrangement for enforcing or protecting the interests of the Trustees as the owners of such stocks, shares, bonds or other securities or obligations, and to pay any assessment levied in connection with such arrangement, and

(*j*) To purchase, acquire and hold shares, bonds and notes and other obligations and securities issued by the Trustees as herein provided and either to cancel and retire the same in whole or in part or to re-issue them in whole or in part to such person or persons, and for such purposes hereby permitted and in such manner and upon such terms and for such consideration as the Trustees may determine but no such shares while so held by the Trustees shall be entitled to any voting rights or to any dividends or be deemed outstanding for any purpose hereunder.

(*k*) To perform and do all such further acts and things as may be properly incidental to the exercise of the foregoing powers or any of them to the same extent to which such further acts and things might be performed and done by a corporation lawfully organized and existing for the purposes and with the powers set forth in this article.

Meetings of Trustees

(12) An annual meeting of the Trustees shall be held immediately after and at the same place as the annual meeting of the Shareholders. Other regular meetings may be held at such places in Massachusetts as the Trustees may by vote from time to time determine. A special meeting of the Trustees may be held at any

time and at any place in Massachusetts when called by the President, Secretary or two or more Trustees. No notice of said annual meeting shall be required, but notice of each other meeting shall be given either by the Secretary or by the person or persons by whom such meeting is called by giving to each of the Trustees three (3) days' notice of such meeting; and such notice sent by mail, postage prepaid, to any Trustee at his usual address on the third day or any earlier day before such meeting shall be deemed sufficient notice to him whether or not the same be received by him, and in computing such time Sundays and holidays shall be included, but it shall not be necessary to give notice of any such meeting as aforesaid to any Trustee who is present at the meeting or who either before or after the meeting waives such notice in writing. A majority of the full board of Trustees present at any meeting shall constitute a quorum for the transaction of business and for the purpose of filling vacancies, as provided in Article 7, a majority of the Trustees continuing in office shall constitute such quorum, but less than a quorum may adjourn any meeting from time to time and such meeting may be held as adjourned without further notice. When a quorum is present at any meeting a majority of the Trustees present and voting shall decide any questions brought before such meeting.

Officers, Agents and Executive Committee

(13) The Trustees shall from time to time elect a President, a Treasurer and a Secretary and may elect one or more Vice Presidents and one or more Assistant Treasurers and such other officers as the Trustees may think proper, and may permit any officer so elected to resign and may remove any such officer with or without cause and may fill any vacancy and may elect temporary officers to serve during the absence or disability of the regular officers or for any specified purpose. Every officer so elected unless otherwise determined by the Trustees shall hold his office until the first meeting of the Trustees following the next succeeding annual meeting of the Shareholders and thereafter until his successor has been chosen. Any such officer may be, but no such officer need be, a Shareholder or Trustee, and any two or more offices may be held by the same person, except that no one person shall be both President and Vice President or both Treasurer and Assistant Treasurer. Such officers shall receive such compensation, if any, as may from time to time be fixed by the Trustees and they shall have respectively, in addition to the powers and duties conferred and imposed upon them by the express provisions of

this declaration of trust, such further powers and duties as may be conferred and imposed upon them from time to time by the Trustees.

(14) The President, if present, shall preside at all meetings of the Trustees and of the Shareholders and in his absence the Senior Vice President, if any Vice President is present, shall so preside, but if neither the President nor any Vice President shall be present at any meeting, a temporary chairman shall be chosen by the meeting.

(15) The Treasurer shall have custody of all moneys belonging to the trust estate and shall deposit the same in such one or more banks or trust companies as may be designated from time to time by the Trustees in the name "Western Massachusetts Companies" and shall disburse the same in the discharge of obligations incurred by the Trustees or for other purposes authorized by the Trustees by checks drawn by him against such deposit account or accounts and signed on behalf of Western Massachusetts Companies by him as Treasurer. He shall also keep accurate books of account of all the financial transactions of the Trustees. If required by the Trustees, the Treasurer shall give bond for the faithful discharge of his duties and the premium on such bond shall be paid out of the trust estate. Such bond, if given, shall be in the custody of the President. All or any part of the duties of the Treasurer may be performed at any time and from time to time by any assistant treasurer designated for that purpose by the Trustees.

(16) The Secretary shall attend, if possible, all meetings of the Trustees, of the Executive Committee if any and of the Shareholders and shall give notice of all such meetings as required by the provisions hereof and shall keep the minutes of all such meetings, but if he is absent from any meeting a temporary secretary shall be chosen by the meeting to act in his place.

(17) The Trustees may likewise from time to time appoint or employ or authorize the appointment or employment of agents or employees or representatives and the Trustees may fix their compensation, term of employment, duties and powers or authorize the same to be fixed and may remove them or terminate their employment or authorize the same to be done. The Trustees may delegate any or all of the powers and discretions of the Trustees to any of the officers, agents or representatives elected or appointed pursuant to the provisions hereof, and all action taken by any such officer, agent or representative pursuant to such delegation shall be binding upon the Trustees. All promissory notes and other negotiable instruments, except checks, and all bonds and other agreements for the payment of money or evi-

dences of indebtedness and all contracts in writing and other documents issued or entered into by the Trustees, except deeds affecting the title to real estate, shall be signed in their behalf as they may determine either by a majority of the Trustees or by such one or more Trustees or officers, agents or representatives of the Trustees as they may designate.

(18) The Trustees may appoint from time to time from among their number an Executive Committee of not less than five (5) members and may at any time abolish said committee or remove any member or members thereof with or without cause, and may fill all vacancies therein. Such committee if appointed shall have and exercise such of the powers and discretions of the Trustees and be subject to such supervision and control by the Trustees as the Trustees shall from time to time determine. Meetings of said committee shall be held and notified from time to time as provided herein with reference to meetings of the Trustees and minutes of such meetings shall be kept as provided in Article 16, and the minutes of every such meeting shall be presented at the next meeting of the Trustees.

Shares and Shareholders

(19) The transferable certificates of beneficial interest known as shares to be issued as herein provided may consist of common shares without par value and of preferred shares of one or more classes when authorized as hereinafter provided, and, subject to the limitations hereinafter contained, shares of any class or classes may be issued by the Trustees from time to time for cash, property or services. Not exceeding six hundred thousand (600,000) of such common shares may be issued by the Trustees, for the purposes hereinafter set forth but not otherwise, without the consent, vote or authority of the holders of any shares previously issued. Of said shares so authorized four hundred thousand (400,000) shall be set apart and reserved to be issued in exchange for shares of Turners Falls Power & Electric Company transferred and delivered to the Trustees and shall be issued for that purpose only, but may be so issued either for shares of said corporation so transferred and delivered pursuant to the deposit agreement described in the preamble hereof, or thereafter for other such shares so transferred and delivered on such terms as the Trustees may determine. The remaining two hundred thousand (200,000) shares authorized as aforesaid may be issued to such person or persons and for such purposes hereby permitted and in such manner and upon such terms and for such consideration as the

Trustees may determine but they shall not be so issued in whole or in part, nor shall any contract or agreement for such issue be made by the Trustees, until after the Trustees shall have acquired as a part of the trust estate at least a majority in interest of the common stock of said Turners Falls Power & Electric Company. Except as hereinbefore provided common shares shall be issued only when authorized by the affirmative vote of at least a majority in interest of all shares previously issued and then outstanding of such class or classes as have general voting power. Preferred shares shall be issued only when authorized by the affirmative vote of at least two-thirds (⅔) in interest of shares having general voting power as aforesaid and also by such vote or consent of the holders of each class of preferred stock previously issued and then outstanding as may be required by the rights, privileges and preferences of said outstanding class established as hereinafter provided. All preferred shares issued shall have such par value, if any, such priority as to dividends which may be cumulative, such priority in liquidation, such voting rights and such other rights, privileges, preferences, restrictions and limitations as may be established and authorized by the votes and consents of Shareholders pursuant to which they are issued. No holder of shares of any class shall have any preemptive or preferential rights to subscribe to any shares of any class issued at any time, except so far as such rights may be provided for by the votes of Shareholders by which such shares are authorized. No fractional shares shall be issued but the Trustees may issue scrip or fractions of shares which may be either assignable or issued to bearer and which when presented to the Trustees by the same holder in sufficient amounts to represent one or more full shares will entitle such holder to receive therefor the number of full shares so represented. Such scrip shall not entitle the holders thereof to vote or to receive dividends thereon but it may be provided that payments in lieu of dividends shall be made to such holders at the time when they convert such scrip into full shares, and if the Trustees see fit, they may in connection with the issuing of such scrip issue to a trustee for the holders thereof the total number of full shares represented by the total amount of such scrip and may pay dividends on said shares to such trustees in trust for the holders of such scrip to be paid over to them respectively on the conversion of such scrip into full shares.

(20) Every Shareholder shall be entitled to receive a certificate in such form as the Trustees shall from time to time approve, specifying the number and kind of shares held by him with such description, if any, as may be necessary to distinguish shares of

one class from shares of any other class or classes. Such certificate shall, unless otherwise determined by the Trustees, be signed on behalf of the Trustees by the President or a Vice President and the Treasurer or an Assistant Treasurer. On evidence satisfactory to the Trustees that any certificate issued hereunder has been worn out, mutilated, lost or destroyed, the Trustees may cause a new certificate to be issued in place thereof on such terms, if any, as to indemnity and otherwise, as the Trustees shall deem proper.

(21) A register or registers shall be kept by or on behalf of the Trustees which shall contain the names and addresses of the Shareholders and the number and kind of shares held by them respectively and a record of all transfers thereof. No Shareholder shall be entitled to receive payment of any dividend declared or to have any notice given to him as herein provided until he has given his address to the Treasurer or to the Transfer Agent hereinafter referred to, so that it may be entered upon such register or registers. The Trustees may employ, if they see fit, a Transfer Agent and also a Registrar of shares, each of which shall be a trust company or national bank doing business in Boston, Massachusetts. The Transfer Agent, if appointed, shall keep the aforesaid register or registers of Shareholders and shall record therein all transfers of shares and shall countersign all certificates of shares issued to the persons entitled thereto. The Registrar, if appointed, shall register all shares from time to time issued by the Trustees and shall endorse a notation of such registration upon all certificates issued by the Trustees.

(22) Every transfer of any shares (otherwise than by operation of law) shall be in writing under the hand of the Transferor or of his agent thereunto duly authorized in writing and upon delivery thereof to the Trustees or to the Transfer Agent accompanied by the existing certificate for such shares, together with such evidence of the genuineness of such transfer, authorization and other matters as may reasonably be required, shall be recorded in the register and thereupon a new certificate for the shares transferred shall be issued to the Transferee and in case of a transfer of only a part of the shares represented by any certificate a new certificate for the residue thereof shall be issued to the Transferor. Until a transfer shall be so delivered and recorded the record holder of each and every certificate shall be deemed to be the holder of the share or shares represented thereby for all purposes hereof and neither the Trustees nor any Transfer Agent nor Registrar nor any officer or agent of the Trustees shall be affected by any notice of such transfer.

(23) Any person becoming entitled to any shares in conse-

quence of the death, bankruptcy or insolvency of any shareholder or otherwise by operation of law, upon production of proper evidence thereof and upon delivery of the existing certificate to the Trustees or the Transfer Agent shall be recorded in the register as the holder of said shares and shall receive a new certificate therefor, but until such record is made the Shareholder of record shall be deemed to be the holder of such shares for all purposes hereof and neither the Trustees nor any Transfer Agent nor Registrar nor any officer or agent of the Trustees shall be affected by any notice of such death, bankruptcy, insolvency or other involuntary transfer.

(24) Shares issued as herein provided shall be personal property entitling the holders only to the rights against the Trustees and with reference to the trust estate which are herein set forth and upon the death of any Shareholder all shares held by him shall pass as a part of his personal estate.

(25) Two or more persons holding any share shall be joint tenants of the entire interest therein, and no entry shall be made in the register or in any certificate that any person is entitled to any future, limited or contingent interest in any share. But any person registered as a holder of any share may, subject to the provisions hereinafter contained, be described in the register or in any certificate as a trustee of any kind, and any words may be added to the description to identify the said trust.

(26) All shares issued hereunder shall be full-paid and non-assessable and no Trustee, officer or agent shall be entitled to look to the Shareholders personally for indemnity against any liability incurred by him in the execution of these presents or to call upon the Shareholders for the payment of any sum of money or any assessment whatever.

(27) Neither the Trustees nor any officer or agent of the Trustees nor any Transfer Agent shall be bound to take notice or be affected by notice of any trust whether express, implied or constructive or of any charge, pledge or equity to which any of said shares or the interest of any of the Shareholders under this declaration of trust may be subject or to ascertain or to inquire whether any sale or transfer of any such shares or interest by any such Shareholder or by his personal representative is authorized by any such trust, charge, pledge or equity or to recognize any person whatever as having any interest in such shares except the persons registered as Shareholders and the receipt of the person in whose name any share is registered or if such share is registered in the names of more than one person the receipt of any one of such persons or the receipt of the duly authorized agent of any

such person shall be a sufficient discharge for all dividends and other money and for all shares, bonds, obligations and other property payable, issuable or deliverable in respect to such share and from all liability to see to the application of such dividends, money, shares, bonds, obligations and other property.

Meetings of Shareholders

(28) An annual meeting of the Shareholders shall be held during the month of February in the year 1928 and in each year thereafter on such day and at such hour as the Trustees may from time to time determine, either at the principal office of the association in Boston, Massachusetts, or at such other place in Massachusetts as may be designated by the Trustees, for the purpose of electing new Trustees in place of and to succeed those whose terms of office expire at that time and for such other purposes as may be specified by the Trustees. If such annual meeting shall not be held as above provided, a special meeting may be held in lieu thereof at any time and any business which might have been transacted at such annual meeting may be transacted at such special meeting and for all purposes hereof such special meeting shall be deemed to be an annual meeting duly held as herein provided. Special meetings of the Shareholders shall be held whenever ordered by the Trustees or the President or requested by the holders of one-tenth in interest of all the shares outstanding of any class or classes having the general right to vote. A written or printed notice of each meeting of the Shareholders, whether annual or special, specifying the time, place and purposes thereof, shall be given to all Shareholders entitled to vote thereat by mailing such notices, postage prepaid, to such Shareholders at least seven (7) days before such meeting. If the Secretary shall refuse or fail to give any such notice of any special meeting such notices may be given by the persons or person by whom such meeting was called or requested. At all meetings of the Shareholders every Shareholder shall have one (1) vote for every share held by him, except so far as it may be provided hereafter that the preferred shares on any class or classes thereof shall have no voting power, or restricted voting power or shall have under certain circumstances the sole voting power to the exclusion of some other class or classes of shares. Every Shareholder entitled to vote at any meeting shall have the same right to vote thereat or at any adjournment or adjournments thereof, either in person or by proxy in writing as in the case of a stockholder in a corporation. At all meetings a majority of all shares issued and out-

standing and having the general right to vote shall constitute a quorum for the transaction of business, but less than such majority may adjourn the meeting from time to time and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting all matters properly brought before the meeting shall be decided by the majority vote of the Shareholders present or represented at such meeting and voting upon such questions, except as otherwise provided herein and as may be otherwise provided hereafter as to particular questions in the provisions for the establishment of the rights, privileges and preferences of any class or classes of preferred shares. For the purpose of determining the Shareholders who are entitled to vote or act at any meeting or any adjourned session thereof, the Trustees may from time to time close the transfer books for such period not exceeding twenty (20) days prior to such meeting as the Trustees may determine or may without closing said transfer books, fix a time not more than twenty (20) days prior to such meeting at which the Shareholders entitled to vote as aforesaid shall be determined.

(29) When any share is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such share, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such share.

(30) If the holder of any share is a minor or a person of unsound mind, or subject to guardianship or to the legal control of any other person as regards the charge or management of such share, he may vote by his guardian or such other person appointed or having such control, and such vote may be given in person or by proxy.

Dividends

(31) The Trustees may from time to time declare and pay to the Shareholders out of the profits or surplus in the hands of the Trustees such dividends as they see fit, but the declaration and payment of such dividends shall lie wholly in the discretion of the Trustees and no Shareholders of any class shall be entitled to receive or be paid any dividends or to any distribution of earnings, profits or surplus except as determined by the Trustees in the exercise of said discretion. Whenever any dividend is declared and paid upon any class of shares outstanding the holders of said class shall all receive the same amount per share, but if any class or classes of preferred shares shall be issued the dividends

paid from time to time shall be paid to and distributed among the separate classes in accordance with the rights, privileges, preferences, restrictions and limitations established in connection with the creation of said preferred class or classes. The Trustees may if they see fit make any dividend payable to Shareholders of record on a date fixed by the Trustees for that purpose but such date shall be subsequent to the date upon which such dividend is declared and not more than twenty (20) days prior to the date upon which it is payable.

Rights of Third Persons

(32) No Shareholder shall be held to any liability whatever for the payment of any sum of money, or for damages or otherwise under any contract, obligation or undertaking made, entered into or issued by the Trustees or by any officer, agent or representative elected or appointed by the Trustees and no such contract, obligation or undertaking shall be enforceable against the Trustees or any of them in their or his individual capacities or capacity and all such contracts, obligations and undertakings shall be enforceable only against the Trustees as such and every person, firm, association, trust and corporation having any claim or demand arising out of any such contract, obligation or undertaking shall look only to the trust estate for the payment or satisfaction thereof, and each and every such claim or demand (unless greater or different rights against the trust estate or some portion thereof are duly authorized by vote of the shareholders and given by express stipulation or by specific mortgage, pledge or charge) shall constitute only a floating charge upon the real and personal property for the time being belonging to the trust estate of such nature and in such manner that the Trustees, notwithstanding such charge and without incurring personal liability for breach of trust or otherwise, may continue to exercise the powers hereby conferred and to deal with said real and personal property by way of sale, mortgage, charge, lease or otherwise or of making distributions thereof all in accordance with the provisions hereof, and that each such floating charge, ranking in this respect *pari passu* with every other such floating charge, shall be enforceable only against the real and personal property from time to time remaining in the trust estate and not disposed of as aforesaid. It shall be the duty of the Trustees and each of them and of every officer, agent or representative elected or appointed by them to include in every written agreement entered into by them or any of them as herein provided, a statement of the immunity provided by this

article for the Shareholders and for the Trustees as individuals and also (unless it is intended to create pursuant to a vote of the Shareholders as aforesaid greater or different rights against the trust estate or some portion thereof by express stipulation or by way of specific mortgage, pledge or charge thereof) a statement that the obligation created by said agreement is only a floating charge as herein provided, and neither the Trustees nor any of them nor any officer, agent or representative appointed or elected by them shall have any power or authority to enter into any agreement or incur any obligation as herein provided except in accordance with the provisions of this article.

(33) The receipts of the Trustees or any of them for money or other things paid to them or him, and in the case of money paid the receipt of the Treasurer, shall be effectual discharges to the persons, firms, associations, trusts or corporations paying or delivering such money or things and from all liability to see to the application thereof, and the statement or representation of any one or more of the Trustees or of the Secretary to the effect that the person or persons purporting to act as Trustees in connection with the sale of any part of the trust estate or in connection with any other action taken on behalf of the association as herein provided, are in fact the Trustees hereunder at that time, or to the effect that any person purporting to act as an officer, agent or representative of the association is in fact such officer, agent or representative, or to the effect that any sale or other action taken as aforesaid has been duly authorized by the Trustees or by the Shareholders as may be required by the provisions hereof or as to the meetings, votes or other proceedings by which such authority was given, shall be conclusive evidence of the fact so stated in favor of every purchaser of any part of the trust estate and of every person, firm, association, trust or corporation dealing with the association through the person or persons so held out as Trustees or as officers, agents or representatives, and in favor of every association, trust or corporation whose shares or other securities are transferred by any such sale, and of every transfer agent transferring such shares.

Responsibility of Trustees and Others

(34) No Trustee, and no officer, agent or other representative elected or appointed pursuant to any provision hereof, shall be liable for any act or default on the part of any co-Trustee, or other officer or agent, or for having permitted any co-Trustee, or other officer or agent to receive or retain any money or property

receivable by the Trustees hereunder, or for errors of judgment in exercising or failing to exercise any of the powers or discretions conferred upon or resting upon him, or for any loss arising out of any investment, or for failure to sue for or to collect any moneys or property belonging to the trust estate, or for any act or omission to act, performed or omitted by him in good faith in the execution of the trusts hereby created, and each Trustee and every such officer, agent or representative shall be answerable and accountable only for his own receipts and for his own wilful acts, neglects and defaults constituting a breach of trust knowingly and intentionally committed by him in bad faith, and not for those of any other, or of any bank, trust company, broker, attorney, auctioneer or other person with whom or into whose hands any property forming part of the trust estate may be deposited or come, or by whom any action relating to the trusts hereof may be taken or omitted to be taken; nor shall any Trustee or any such officer, agent or representative be liable or accountable for any defect in title, or for failing to transfer to or vest in the Trustees title to any property or effects for the time being subject to any of the trusts of these presents, or intended or believed to be so subject, or for failing to take out or maintain any or sufficient insurance or for liens or encumbrances upon any such property or effects, or for lack of genuineness or for invalidity of the shares, bonds, or other obligations or instruments forming part of or relating to the trust estate, or for any loss, or otherwise, unless the same shall happen through his own wilful act, neglect or default constituting a breach of trust knowingly and intentionally committed by him in bad faith; and the Trustees and each of them and each such officer, agent or representative shall be entitled out of the trust estate to reimbursement for their or his reasonable expenses and outlays and to be put in funds and exonerated and indemnified to their or his reasonable satisfaction from time to time, against any and all loss, costs, expense and liability incurred or to be incurred by them or him in the execution of the trusts hereby created; and no Trustee, however appointed, shall be obliged to give any bond or surety or other security for the performance of any of his duties in the said trusts.

(35) The Trustees may consult with any counsel, lawyer, valuer, surveyor, engineer, broker, auctioneer, accountant or other expert, consultant or person deemed by them competent, to be selected, employed, retained or consulted by them at the expense of the trust estate, whether individuals, firms or corporations, and whether or not disinterested or generally or specially employed, retained or consulted, and any action taken by the Trustees in

good faith on the opinion or advice of, or information received from, any such counsel, lawyer, valuer, surveyor, engineer, broker, auctioneer, accountant or other expert consultant or person deemed by them competent, shall be complete and conclusive protection to the Trustees and each of them.

(36) No sale, contract, arrangement or other dealing made or entered into on behalf of the association or in which it is directly or indirectly interested to or with any Trustee or officer hereunder or to or with any firm, corporation, trust or association in which any such Trustee or officer is interested and no such sale, contract, arrangement or other dealing in which any such Trustee or officer is in any other way directly or indirectly interested shall be voidable either by the Trustees or by the Shareholders, nor shall any such Trustee or officer so interested be liable to account either to the Trustees or to the Shareholders for any profit or benefit arising from any such sale, contract, arrangement or other dealing.

Duration, Termination and Amendments

(37) Unless sooner terminated as provided in Article 39, the trust hereby created shall continue in such manner that the Trustees shall have all the powers and discretions expressed to be given to them by these presents, and that no Shareholder shall be entitled to put an end to the same or to require a division of the trust estate or any part thereof until the expiration of seventy-five (75) years from the formal date hereof, or the expiration of twenty (20) years from the death of the last survivor of the following persons: Allen Abercrombie and Alice Abercrombie, children of Fred C. Abercrombie of Turners Falls, Massachusetts, Rachael Brown, Deborah Brown and Letitia Brown, children of Howard W. Brown of Brookline, Massachusetts, Gertrude Peabody, Anne P. Peabody, Katherine Peabody and Cora W. Peabody, children of W. Rodman Peabody of Milton, Massachusetts, Edward D. Rowley, Charles F. Rowley, Jr. and Francis H. Rowley, children of Charles F. Rowley of Brookline, Massachusetts, and Charles M. Storey, Jr., Anderson Storey, Susan J. Storey and Gertrude Storey, children of Charles M. Storey of Boston, Massachusetts, whichever of the said periods shall first expire, and at the expiration of the time so limited the said trusts shall terminate.

(38) The death of a Shareholder or a Trustee or the dissolution of a Shareholder (if a corporation) during the continuance of the trust hereby created shall not operate to terminate the same nor shall it entitle the legal representatives of any such Shareholder

or Trustee to an accounting or to take any action in the courts or otherwise.

(39) The trust hereby created may be terminated at any time by the affirmative vote of the holders of two-thirds (⅔) of the outstanding shares which carry the right to vote generally; and any of the terms, powers and provisions herein contained may be at any time altered, amended, added to or rescinded by the affirmative vote of the holders of such proportion of the outstanding shares of each class or series as the rights, preferences and limitations relating to said class or series require (or by the written consent of said holders if said written consent is in said rights, preferences and limitations provided for), and by the affirmative vote of the holders of two-thirds (⅔) of the outstanding shares of each other class or series the relative rights of which will be affected by such alteration, amendment, addition or rescission, and by the affirmative vote of the holders of two-thirds (⅔) of all other outstanding shares which carry the right to vote generally.

(40) In case these trusts shall be terminated or any of the terms, powers and provisions herein contained shall be altered, amended, added to or rescinded pursuant to the provisions of Article 39, a certificate in any number of counterparts deemed desirable, setting forth such termination, alteration, amendment, addition or rescission and that the Shareholders have authorized the same in accordance with the provisions of said Article 39, shall be signed by the Trustees or a majority of them, and by the Secretary, and shall be acknowledged by one of the Trustees and the Trustees shall cause counterparts thereof to be recorded or filed in the various registries of deeds, if any, in which this declaration of trust is then recorded and at the principal office of the association and in such other places as may be required by law.

(41) Upon the termination of the trust hereby created either by the aforesaid limitation contained in Article 37 or as provided in Article 39 the Trustees shall forthwith sell and convert into cash in the manner and with the powers hereinbefore set forth, all property belonging to the trust estate except such stocks, bonds or obligations as they may determine to distribute in kind as hereinafter provided and shall thereupon distribute the entire trust estate as it then exists to and among the Shareholders by giving to the holders of preferred shares of any class or classes then outstanding such preferences and priorities and such amounts per share as they may be entitled to respectively and by dividing the remaining assets, share for share, among the holders of the common shares and of the shares of any other class or classes

which may be entitled to such distribution in such manner that each such holder shall receive the same amount per share as every other such holder, and in making such distribution the Trustees shall have full power to pay and deliver to the Shareholders or any of them either money or such stocks, bonds or obligations as the Trustees may see fit so to distribute, or partly money and partly such stocks, bonds or obligations, and in this connection to place such valuation as they may deem proper upon all stocks, bonds or obligations so distributed.

General Provisions

(42) Except when the context otherwise requires, any expression used herein in the conjunctive or the disjunctive shall include both the conjunctive and the disjunctive, and any expression in the singular or the plural shall include both the singular and the plural.

(43) The headings of different parts of these presents are inserted merely for convenience of reference, and are not to be taken as any part of these presents or to control or affect the meaning, construction or effect of the same.

(44) This instrument is executed by the Trustees and delivered in the Commonwealth of Massachusetts, and with reference to the laws thereof, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of said Commonwealth.

In witness whereof we have hereunto set our hands and seals at Boston in the Commonwealth of Massachusetts, on or as of the fifteenth day of January, in the year nineteen hundred and twenty-seven, which date shall be the formal date hereof and may be used in all references hereto, this being one of six counterparts or original copies hereof, all executed in the same manner and at the same time and constituting together one and the same instrument.

George W. Lawrence	[seal]	Charles Walcott	[seal]
Alvah Crocker	[seal]	Moses Williams	[seal]
W. Rodman Peabody	[seal]	Charles Stetson	[seal]
Alfred L. Ripley	[seal]	J. Preston Rice	[seal]
Charles W. Hazelton	[seal]	Samuel Ferguson	[seal]
Arthur W. Wood	[seal]	Jonathan Bulkley	[seal]

Note: The six original executed copies of the foregoing declaration of trust are all signed, sealed and acknowledged by the twelve trustees whose names are printed above and certificates of such acknowledgment are duly endorsed thereon and one of said copies has been filed with each of the following, namely:

The Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts.

The City Clerk of Boston, Massachusetts.

Old Colony Trust Company, Transfer Department, 17 Court Street, Boston, Massachusetts.

The Merchants National Bank of Boston, Transfer Department, 28 State Street, Boston, Massachusetts.

Western Massachusetts Companies, 70 State Street, Boston, Mass.

Department of Public Utilities of the Commonwealth of Massachusetts.

III

PROMOTION

1. Promotion Defined

Cook, on *Corporations,* 8th ed., sec. 651, defines a promoter as "a person who brings about the incorporation and organization of a corporation. He brings together the persons who become interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which leads to the formation of the corporation itself."

In *McMillen* v. *Ritchie,* 64 Fed. 253, 260, occurs the following: "He was a man of great ability, enormous energy, and a towering ambition for great enterprises. As a promoter or 'boomer' he seems to be unrivaled; a man of large general information and robust constitution, extraordinarily sanguine, desperately pugnacious, generous as a prince, and possessing no degree of caution whatever. His ambition was to make millions."

In *Dickerman* v. *Northern T. Co.,* 176 U. S. 181, 204, the United States Supreme Court said: "The promoter is the agent of the corporation and subject to the disabilities of an ordinary agent. His acts are scrutinized carefully, and he is precluded from taking a secret advantage of the other stockholders."

2. Work of the Promoter

A. S. Dewing, in his *Financial Policy of Corporations,* p. 236, says that promotion is divisible into five stages, as follows:

1. Conception of the enterprise by the promoter.
2. Working out of details of the enterprise by the promoter.
3. Formulation of the financial plan, usually jointly by banker and promoter.

4. Formation of an underwriting syndicate by the banker.
5. Sale of securities to the public to secure the necessary capital.

The promoter's services have become increasingly important with the increase in the scale upon which industry and commerce are carried on. It is frequently necessary that some one make the initial effort required to secure the interest of persons capable of supplying the requisite amount of capital. To do this he must serve as a kind of advance agent for the corporation he proposes to establish. His is a legitimate and useful place in the modern industrial world, and the fact that he sometimes misleads or defrauds investors is not discreditable to the work of promotion generally.

Although the origin of an important enterprise is likely to take its rise in the imagination of one man, it does not follow that he alone is to be given credit for its existence and development. Oftentimes the work of promotion is participated in by many men all working toward some common end. Sometimes the man who possesses inventive genius becomes the man who promotes it; sometimes he enlists others better qualified to serve in this capacity. If the promoter continues his interest in an enterprise after the promotion is ended he becomes to that extent an entrepreneur.

3. Risks of Promotion

The risk involved in a given instance depends on the nature of the business or article under consideration. Sometimes the experience available upon which the promoter may base his estimates of costs and revenues is so large that he can map out a fairly accurate forecast of possibilities. If, however, he desires to promote some new idea or invention the sale of which is dependent upon the public fancy the risks are large and the outcome highly questionable. If the success of the undertaking is dependent on patents care must be exercised to see that the patents really protect; otherwise the money spent on extensive advertising campaigns may prove beneficial to unscrupulous competitors.

Sometimes promotion consists of consolidating existing independent enterprises. In this instance the promoter bases his plans on the results already being secured, the uncertain elements in his calculations resulting from the change in organization, etc., which will result from the consolidation.

Risk may be minimized by securing the highest quality of available technical services to assist in the formulation of plans. Frequently promotions are of a character such that little can be accomplished without such assistance. This is true in case of railroads, public utilities and mines.

4. Qualifications of Promoters

Essentially the promoter must be a man of imagination, and capable of cooperating with many people—engineers, underwriters and investors. He must be a man of integrity and ability, possessing a mind open to suggestions and willing to make revolutionary changes in plans if conditions require it. He must possess a sound business judgment as well as a good understanding of the needs of the community in which he is interested. He should be aware of new public demands as they arise and of the means of satisfying them.

5. Promoter's Profits

Since the promoter's risk is large, his compensation, if he is successful, is correspondingly large. He receives his remuneration, as a rule, in common stock, consequently may be compelled to wait long for the materialization of his profits even when the enterprise is successful. Frequently 10% of the common stock is regarded as reasonable compensation, but there naturally is no established rule. Where the functions of promoter, investor, and banker are combined in one person he receives a larger share than otherwise.

For the promotion of public utilities some state commissions have refused to make any allowance; others have permitted a fair compensation. The California commission asserts that:

"Payments for promoters' services and organization expenses are as necessary to the success of a public utility, and are as properly subjects of capitalization as the cost of the component parts of the utility's plant. . . . A public authority, in estimating the value of such services, should be liberal so that men of ability may be attracted to the development of new utility enterprises where needed for the development of the state. . . . It may be well that in addition to a reasonable compensation for the time devoted to the work, the promoter should be allowed an additional remuneration to compensate him for his risk of failure." *Opin. and Orders Rd. Com., Cal.*, 116.

A survey of many state commissions undertaken to determine their attitude toward promoters' profits resulted in the following table found in Dewing, *Financial Policy of Corporations*, p. 253:

State	Year Latest Decision	Promoter's Stocks	Allowance
California	1924	Allowed	⅓ to 3¼%
District of Columbia	1920	Allowed	.....
Illinois	1921	Allowed	2%
Idaho	1924	Allowed	1.8% to 10%
Indiana	1917	Disallowed	.....
Maine	1918	Disallowed	.....
Maryland	1918	Allowed	.....
Missouri	1923	Allowed	5% to 6½%
Montana	1922	Allowed	2%
Nevada	1921	Disallowed	.....
New Hampshire	1921	Allowed	.....
New York	1921	Allowed	2%
Pennsylvania	1925	Allowed	1% to 2%
Utah	1920	Allowed	.....
West Virginia	1925	Allowed	2½%
Virginia	1925	Allowed	2½%
Wisconsin	1921	Allowed	Under 3%

Although promoter's profits are sometimes excessive they may be large without being excessive. As a rule, the promoter's reward is in the form of common stock of the enterprise which he promotes. There are exceptions to this

rule, however, and the desire on the promoter's part to secure quick realization of his profits has in some instances caused him to seek secret profits.

Since the relation of the promoter to the company which he promotes is that of a fiduciary, he must not transgress certain well-defined legal principles. Possessing absolute control of the affairs of the incipient company, he selects the board of directors and in many ways enters into arrangements which later become binding contracts of the company. Consequently his relationship to the corporation is one of trust. From this results the well-established legal principle that he must make a full disclosure of his profits to interested parties. *Arnold* v. *Searing*, 78 N. J. Eq. 146, 157.

A promoter cannot deal with his corporation as with a stranger. The rule, *caveat emptor*, does not apply. Hence the rule regarding secret profits.

So long as the promoter conceals no facts relative to his profits he is privileged to make as large profits as conditions permit.

The leading case on this subject is the English case, *New Sombrero Phosphate Company* v. *Erlanger*, L. R. 5 Ch. Div. 73. Erlanger organized a company naming five directors, none of whom was in a position to pass a fair judgment on the case, and did not know he was making a profit. In reality, he sold property offered to himself and associates for £55,000, to the corporation for £80,000 cash and £30,000 in shares. Stockholders later discovered the facts and brought suit. The court ordered the sale rescinded, the vendors were compelled to return the price to the company, and title to the property was restored to the original owners.

Had an independent board of directors been named and had Erlanger disclosed all facts to them, the sale would no doubt have been confirmed by the court.

The rule is essentially the same in the United States. Full disclosure of all facts relative to the profits made is necessary if the promoter expects to be protected therein by the courts. It is not necessary that promoter's profits be held fraudulent

to make them improper. Even though altogether reasonable in amount they will not be confirmed if the facts relative thereto have been kept from parties entitled to know them.

In case of property purchased by the promoter before he began to act as promoter the rule is different. He did not act in a fiduciary capacity when he bought it, and with reference thereto he is not the agent of the corporation which he seeks to establish. Hence with reference to such property he may deal with the corporation as he would with any other person or concern. He is not obliged to disclose its cost or the profit he makes if he sells it to the corporation. However, he must not pretend ownership when in reality he has merely an option on such property. *Richlands Oil Co.* v. *Morriss,* 108 Va. 288. Full disclosure of his actual status in relation to such property is all that is required.

It has been held in New Jersey that the promoters are in duty bound to select for the corporation a competent and independent board of directors to negotiate, in the interest of the stockholders, the purchase of property for which stock is to be issued. It is, moreover, the duty of the promoters to make full disclosure of all pertinent facts to the directors, including actual cost of properties to be transferred, as well as facts relative to the value and cost of reproduction of such property. *See* v. *Heppenheimer,* 69 N. J. Eq. 36. There is, however, some controversy as to the duty of the promoters to provide an independent board of directors.

A promoter may commit a breach of trust by accepting a commission or bonus from one who sells property to the corporation, and he may be required to return such profit to the corporation; failing which, the corporation may rescind its purchase of the property.

If the directors know that a promoter has taken secret profits, a subscriber to the corporation's stock may sue them for fraudulent misrepresentation.

The necessity of revealing all facts relative to his activities cannot be overemphasized if the promoter desires his work to be such as will stand the test of scrutiny in court.

6. Promoter's Contracts

Since the corporation is not in existence at a time when it is necessary for the promoter to enter into arrangements involving the making of contracts, he must act for the corporation, on the assumption that the contracts which he makes will later on be ratified by the corporation. This it naturally does, in the course of events, thus binding itself.

Cases arise, however, where parties get charge of the corporation who are hostile to the promoter and object to ratifying his contracts. The promoter may then find himself in an embarrassing situation. If the state laws or the corporation's charter requires the execution of such contracts he is protected, but otherwise not. Such promoter's contracts are regarded as open offers which the corporation, its organization being completed, may accept or reject, as it chooses. *Wall* v. *Niagara Mining & Smelting Co.*, 20 Utah 474.

In Massachusetts the law regards promoter's contracts as nullities so far as the corporations organized by the promoters are concerned. The corporation may execute entirely new contracts, if it desires, identical in every respect to those made by the promoter, but new and distinct contracts, nevertheless.

Although it is usually optional with the corporation to ratify the promoter's contracts, such ratification need not be made formally. It is equally effective if made indirectly by so acting that ratification will be implied.

One contracting with a promoter may specify in the contract that he will look to the corporation, not to the promoter, for satisfaction. In such case he cannot hold the promoter. *Lane & Co.* v. *United Oil Cloth Co.*, 103 App. Div. (N. Y.) 378. Otherwise the promoter is personally liable until released through ratification by the corporation. *Bonsall* v. *Platt*, 153 Fed. 126.

Following are various forms of promoter's contracts and related documents. These are merely illustrative and will require modification to fit the circumstances.

FORM 2

OPTION AGREEMENT TO SELL PROPERTY TO PROMOTER

This agreement made this.....day of....., 19...., by and between.....party of the first part and..... party of the second part

Witnesseth:

That for and in consideration of the sum of..... .....Dollars ($.....) paid by each of said parties unto the other, receipt whereof is hereby acknowledged, and the mutual covenants and agreements herein contained it is agreed as follows:

That said party of the first part shall sell and said party of the second part shall buy the property described and specified in the annexed schedule marked "Exhibit A" for the sum of..... .....Dollars ($.....), of which amount .....Dollars ($.....) shall be paid forthwith to said party of the first part as a deposit.

That if before the.....day of..... said party of the second part shall have resold said property described and specified in "Exhibit A" to a corporation duly organized under the laws of the State of.....for the purpose of acquiring said property and for such other purposes as may be specified in its charter, said party of the second part shall have the option of paying any unpaid portion of the balance due said party of the first part by securing for said party of the first part an allotment or transfer of full paid and non-assessable shares of the capital stock of said corporation, said shares to be treated as worth their par value.

That said party of the first part is under obligation to show a good title to said property described and specified in "Exhibit A," whether in his own name or in that of some other party who has agreed to convey the title thereof in accordance with his instructions, and that such transfer shall be made to said party of the second part or to his duly specified agent at or before such time as may be hereinafter specified.

That the purchase of said property described and specified in "Exhibit A" shall be completed on or before the.....day of....., 19...., at such place as said party of the second part may designate, whereupon said party of the second part or his agent shall specify any unpaid balance of the purchase money.

That said party of the second part shall before the time herein set for the completion of the purchase, designate some trust company to make an examination of the title to said property, the report of said trust company with reference to said title to be regarded as satisfactory evidence thereof.

That said party of the second part may at any time before the .....day of....., 19...., annul his agreement to purchase and that if said purchase money shall not have been paid to said party of the first part at the time and in the manner herein specified, then said party of the first part may at any time thereafter annul his agreement to sell to said party of the second part by notice given him in writing.

That if this agreement is annulled in the manner specified above, the deposit left in the hands of said party of the first part shall be forfeited.

In witness whereof said parties hereunto set their hands and seals this.....day of....., 19.....

.....(SEAL)

.....(SEAL)

Form 3

Contract of Subscribers with Promoter or Contractor

We, the subscribers hereto, hereby enter into this agreement with....., of....., party of the first part, the subscribers hereto being parties of the second part, for the construction of a moving picture theatre to be located in the city of....., state of.....

The total cost of the theatre building shall be fifty thousand dollars ($50,000) and shall be constructed and paid for in accordance with the following terms and conditions.

This contract shall not become binding until Seventy-Five Thousand Dollars ($75,000) of the capital stock of the proposed company, which shall own and operate the theatre, shall have been subscribed. The liability of each subscriber shall be limited to the amount of his subscription. Each subscriber agrees to pay his subscription in accordance with the following plan: 30% of the amount subscribed when the foundation of the building is completed, 30% more when the building is under roof, and the remaining 40% when the theatre is ready to begin operations.

Forms of subscription agreement may be circulated in such manner as may be deemed proper, and at any time after the total

amount of the subscription equals Sixty Thousand Dollars ($60,000) the subscription agreements may be made a binding contract between parties of the second part and party of the first part by the first party's special agent signing the subscription agreements. Such agreements when signed by both the subscribers and by party of the first part shall constitute the sole contract between the parties. All subscriptions shall remain the property of party of first part until party of first part shall have been reimbursed in full for the contract price. Said party of first part may collect full amount due under the contract, but any amount collected over and above the contract price for construction of the building shall be the property of parties of the second part.

Parties of the second part hereby agree to appoint a committee of three, whenever this contract may be closed, which by a majority vote may represent them in all respects. Said committee shall have the privilege of inspecting and passing upon work and material of first party employed in the construction of said building. Parties of the second part shall within 30 days from date of this contract furnish at their own expense a suitable site with good title whereon party of the first part shall construct said building. Party of the first part guarantees to complete the construction of the building within a period of six months from date of this contract and in case of failure to complete the building within six months from date of this contract he agrees to submit to a penalty of $50 per day for each day beyond the expiration of such period of six months necessary for completion of said building. The specifications and descriptions of the building attached hereto are a part of this contract. In order to form a corporation to own and operate said theatre building, the subscribers to this contract hereby agree that they will meet in compliance with five days' notice to be issued by the committee herewith provided for, at the time and place specified in said notice, and proceed to organize a corporation for the operation of said building. At such meeting each subscriber shall be permitted to cast one vote in person or by proxy for each One Hundred Dollars ($100) subscribed by him. All contracts made by party of the first part with agents must be in writing. For the full and faithful performance of our parts in this agreement we hereby bind ourselves, our successors, and assigns.

Executed this 15th day of June, 19.....

The.....Company

By....., Special Agent

Names of Subscribers	Number of $100 Shares Subscribed	Amount Subscribed

Form 4

Offer to Underwrite Addressed to Promoter

Date.....

To.....

Sir: It is our understanding that you are in charge of the formation of a company whose objects are..... and that the capital stock of the proposed company will amount to .....Dollars ($.....) of which it is your intention to market.....shares of the par value of.....Dollars ($.....) each, through public subscription at the time of the formation of the company. We hereby offer to enter into an agreement with the proposed company to underwrite..... shares in the above named issue on condition that you act for the company and enter into an agreement with us in the form of attached schedule marked "Schedule A" wherein is contained the details of such proposed agreement. This offer shall be irrevocable, provided the company be organized and the shares offered to the public within .....calendar months from the date of this offer.

.....and Company

Signature of Underwriter

Form 5

Underwriting Agreement

Date.....

To the Directors of The.....Company.

Sirs: In consideration of your agreement to pay us a commission of.....per centum on the nominal value of the shares we hereby underwrite.....shares of the capital stock of your Company, a portion of the issue of..... shares shortly to be offered to the public upon the following conditions:

1. All allotments made to the public are to be applied to the relief of the underwriters pro rata in proportion to the amounts which they have agreed to underwrite respectively.

2. The said commission is to become payable to us within..... ....days from the date of closing the subscription lists provided we fulfill our part of this agreement.

3. This letter shall be irrevocable provided the public issue is made within.....days from the date hereof.

4. We agree to be bound by the terms of the prospectus handed to us provided the amount of capital and working capital remain unchanged. The name of the Company may be changed if necessary to procure a charter and no errors in said prospectus shall enable us to violate the terms of this contract or repudiate the allotment made to us.

5. In case we receive by allotment a less number of shares than stated in this agreement we agree to accept any such less number as you may allot upon the terms of this agreement in the same manner as if the entire number mentioned herein had been allotted to us.

6. We agree immediately on allotment to pay you the amounts due under the terms of the prospectus with respect to this issue.

7. In consideration of the commission herein agreed to be paid us this obligation shall be irrevocable for a period of..... months from the date hereof.

.....
Signature of Underwriter

FORM 6

PROMOTER'S ACCEPTANCE OF OFFER TO UNDERWRITE

Date.....

To.....

Sir: Relative to your proposal to enter into an agreement for the underwriting of.....shares of the proposed..... Company, I beg to state that I hereby accept your offer under date of....., 19...., and undertake to form the company and to do everything in my power to see that said company enters into the contemplated agreement with you.

.....
Signature of Promoter

FORM 7

COMPANY'S ACCEPTANCE OF OFFER TO UNDERWRITE

The.....Company

Date.....

To.....

Sir: On behalf of The.....Company I am in-

structed by a resolution of the Board of Directors to state that your offer to underwrite.....shares in the proposed issue is accepted to the extent of.....shares. Kindly sign the memorandum below and return to me.

.....
Secretary

I hereby acknowledge receipt of acceptance by The..... Company as to.....shares of the issue of stock to be offered to the public on....., 19.....

.....

Date.....

FORM 8

AGREEMENT TO PURCHASE PROPERTY

This agreement made this.....day of....., 19...., by and between.....of..... hereinafter called the Vendor and The..... Company, a corporation organized under the laws of the State of.....hereinafter called the Vendee.

Whereas, the Vendor is the owner of the property hereinafter described.

Whereas, the Vendee desires to purchase said property from the Vendor for the sum of.....Dollars ($.....), the Board of Directors of the Vendee Corporation having declared said property to be of a par value of.....Dollars ($.....) and essential to the carrying on of its business.

Now Therefore Know All Men, that parties hereto mutually covenant and agree in consideration of the sum of One Dollar ($1.00), amount paid by the Company to said Vendor, receipt whereof is hereby acknowledged, said Vendor hereby sells, assigns, transfers and sets over unto said Vendee the general warranty of title unto said Company, its successors and assigns, the following property at the prices specified to wit:

.....
.....
.....

It is furthermore agreed that said Vendee hereby purchases the properties enumerated above at the prices specified and agrees to purchase and hereby does purchase all of said properties for the sum of.....Dollars ($.....).

The Vendee agrees to issue unto the Vendor and the Vendor agrees to accept from the Vendee capital stock of the Vendee Corporation in the aggregate amount of..... Dollars ($.....), being full paid and non-assessable stock of the Company, which is to be taken in full payment and discharge of the purchase price of said property hereto agreed upon. The Vendee Company agrees to issue certificates of stock to the amount of.....Dollars ($.....) to said Vendor or to such parties as he may in writing designate.

In witness whereof, said Vendor has hereunto set his hand and seal and said Vendee has caused this instrument to be signed in its behalf by its officers thereunto duly authorized and its seal to be hereunto affixed, the day and year above specified.

(Corporate Seal)

Attest:

.....

Secretary

.....(SEAL)

.....(SEAL)

.....(SEAL)

By.....

President

Witnesses:

.....

.....

Form 9

Notice Accepting Option

To.....

.....

We hereby notify you of our acceptance of the option granted by you to us in accordance with an agreement made on the..... day of....., 19...., of all the coal and other minerals underlying your farm located at..... and said to contain.....acres, as specified in the detailed exhibit accompanying the option agreement above mentioned.

We shall have a survey made of your farm to ascertain the exact acreage and as soon as this is completed will inform you as to the result and supply you with a plat of same.

Kindly have prepared an abstract of title for this property

which we may submit to our attorneys for examination and approval.

The.....Company
By.....
President

---

7. Promoter's Expenses and Liabilities

In connection with the organization of a corporation certain expenses are inevitable. Ordinarily the corporation pays these or reimburses the promoter without question. In some instances it makes itself liable by accepting the benefits, hence is estopped from denying its liability. In other instances recourse must be had to the court decisions of the state of incorporation. In general, promoters are liable for all expenses incurred in organizing a corporation. Thus the cost of preliminary surveys may be recovered from the promoters of a railroad. *Vaughn* v. *Morris,* 180 S. W. 954. Organizers of a railway are liable to the attorneys employed in connection with the project. *Storey* v. *Bickford,* 129 N. E. 714. Promoters who employ an attorney whom they authorize to contract for printing are personally liable for the printing bill. *Hersey* v. *Tully,* 8 Colo. App. 110.

A promoter is not liable on a contract made before he became associated with the enterprise, even though the contract is performed after he thus associates himself, nor for contracts made in writing before he became promoter, nor for contracts made subsequent to his withdrawal as promoter.

A promoter who leases land from one knowing that a corporation is to be formed and later assigns such lease to the corporation cannot be held personally liable on the lease. Cook on *Corporations,* 8th ed., sec. 705. Neither does the promise of a promoter that the corporation will make certain payments render him personally liable therefor. *Durgin* v. *Smith,* 133 Mich. 331. If, however, he gives a mortgage in his own name on a contract to purchase, he will be held personally liable, even though he acts as agent for the

corporation, the mortgagee not knowing that he acts as agent. *Lewis* v. *Weidenfeld,* 114 Mich. 581.

In general, promoters are liable for purchases made before the corporation is organized unless there is an agreement to the contrary. This is true even though they used the corporate name in making such purchases, or even though they state that the purchases are made for a corporation to be organized.

As among promoters the rule of contribution holds. That is, if one promoter is held personally liable on a contract made for a proposed corporation he may collect from his co-promoters. Promoters, however, are not partners.

But for secretarial services which he himself renders a promoter cannot collect from his co-promoters, unless there is an agreement to that effect. *Baily* v. *Burgess,* 48 N. J. Eg. 411. He can collect, however, on a surveying contract.

If one promoter fails to proceed with the promotion an action can be brought against him for breach of contract by his co-promoters. The amount of the liability is measured by the actual loss sustained by the co-promoters, not by the loss of prospective profits.

If a promoter contracts with others to organize a corporation and they fail in their part, he cannot collect damages unless he is able to prove complete performance on his part, or at least that he was ready and able to perform but was prevented from doing so through acts of the other parties.

If a promotion scheme is abandoned, any one of the promoters active therein may later revive it or carry out a similar scheme without becoming in any respect liable to his associates in the earlier undertaking.

8. Legal Status of Promoter

The promoter's legal status is doubtful. For this reason one authority argues for statutory definition of the promoter's status. Isaacs, 38 *Harv. L. R.* 887 (May, 1925). There has been difficulty in determining who are and who are not promoters. Anybody is liable as promoter who

induces a stranger to act in expectation of payment from the prospective corporation. Promoters are liable for services rendered by clerks, engineers, and others engaged in the promotion of a corporation. For contracts made before a corporation is organized promoters may be held liable as partners.

9. Promotion and Competition

The work of the promoter may be aimed at the stifling of competition, as in the case of the long series of industrial consolidations which occurred between 1880 and 1905, or it may result in increased competition, as where monopoly profits exist and a promoter undertakes the establishment of a competing enterprise in order to share in such profits. In doing this it is well to remember that the increased competition will tend to diminish profits and that unless the newly organized concern can operate more economically than can its established competitors its chances of success may not be bright.

10. Stages in Promotion

The first stage in promotion may be said to be that of discovery—the origination of the idea in the mind of the promoter. This usually results from the rise of a demand on the part of the public for some form of service or for some commodity. Sometimes the promoter senses the need for such service or commodity before the public itself is aware of it and is thus able to anticipate the demand for it.

Sometimes discovery results only after prolonged investigation. Again, it may result from destructive competition, against which the participants see as the only remedy some form of consolidation.

The person who first conceives the idea of some new enterprise may, because of his prejudices, be the person least fitted to make an impartial investigation of its merits as a possible basis for business enterprise. It is here that the

professional promoter is most useful. He is peculiarly fitted by both training and temperament to outline with the greatest likelihood of success what is likely to result if the idea is fully exploited.

A rough investigation may be regarded as the second step in the process of promotion. This may be brief for no successful promoter is likely to waste much time considering the feasibility of a project, the idea of which does not originate in some responsible mind. If, however, the origin of the idea gives promise of its success if developed, the promoter goes farther.

A detailed investigation is then in order. This consists in replacing what is largely a matter of opinion in his mind with a body of scientific data. To do this large expenditures of money may be necessary. The kind of skill required necessarily depends on the character of the proposed enterprise. Engineers will be employed if problems of production are involved. An expert in marketing will be required if the problems be primarily in the field of distribution. Where the work to be done consists in consolidating independent concerns, the problem lies primarily in the field of valuation, hence valuation experts and accountants will find their services in demand. As technical problems of one sort or another arise still other types of specialized services may be required—legal, geological, chemical, and so on.

The purpose of a detailed investigation is to arrive at reliable information relative to:

a) The investment required to carry out the proposed program.
b) The amount of gross earnings which may be expected to be derived, once operations are under way.
c) The cost of operation.

Before undertaking the detailed investigation it is usually desirable to give some attention to the problem of the limits within which the new enterprise may most profitably be contained. This is a problem in industrial integration. An enterprise may manufacture all of the goods it sells, it may

manufacture them in part only, or it may not engage in manufacture at all. It may buy the raw material but have the manufacture done on contract. Many such variations confront the promoter naturally interested in seeking out the most profitable combination of activities.

11. Making the Investigation

In studying capital requirements, gross earnings and operating costs the investigator has access to the usual tools of statisticians, financiers and accountants. The experience of other concerns may afford a detailed analysis of costs of plant construction for similar enterprises. In general costs are divisible into promotion, organization, capital asset, and working capital costs. This grouping may vary in different cases. Illustrative of the detailed costs of a gas plant is the following from the brief of the prosecutor, *Public Service Gas Co., Prosecutor,* v. *Board of Public Utility Commissioners, et al, Defendants,* New Jersey Supreme Court.

The cost of a gas plant and of acquiring its business may be subdivided as follows:

1. Preliminary development, which includes:
   a) Investigation of the project;
   b) Assembling of parties who may be willing to participate;
   c) Preliminary engineering and legal advice on the proposition;
   d) Canvass of territory to ascertain if sufficient business can be obtained;
   e) Estimate of cost of plant and probable income;
   f) Incorporation of the company; and
   g) Securing the franchise.
2. Real estate,
3. Labor, materials and sub-contracts,
4. General contractor's profit,
5. Engineering,
6. Expense of company organization during construction,
7. Interest during construction,
8. Taxes and insurance during construction,
9. Stores, supplies and working capital,
10. Acquiring or establishing the business, which includes:

a) Expense of canvassing for business;
b) Advertising;
c) Setting meters free of charge;
d) Interest on cost of plant in excess of income until business becomes self-supporting; and
e) Taxes and insurance during that time.

11. Legal expenses,
12. Financing, including banker's commission, discount on bonds and promoter's profits.

Many of these items are overlooked by those who have had no experience in the actual establishment of such a business, and that, no doubt, is the reason why the cost of such a plant and establishing such a business almost always largely exceeds the anticipated outlay.

The value of a gas property and business, however, exceeds the sum of the items I have mentioned, if the property is well located, and the property now in question is favorably located. (Case, pp. 446-453; also pp. 1278 and 1279.) If such a plant were not worth more than it cost it would be unwise to construct it. And if it were known that the value of such a plant would be cut down for rate making to its actual cost less depreciation, capital could not be found to build it.

Actual disbursements in money for the construction of a gas plant must be made:

1. For preliminary development prior to beginning the actual work of construction,
2. For real estate,
3. For material and labor.

These expenses are sometimes called structural cost. After construction of the plant additional disbursement must be made.

4. For the development of the business.

These four elements of value of a gas plant are actual disbursements of money. There are also other outlays which are commonly called overhead charges, to which reference will be made hereafter. Such charges are really a part of structural cost. Besides, there are other elements of value of such a property, the principal of which are:

1. The value created by an organization of pieces of physical property into an income producing unit. This value was recognized and stated in the case of *Newark* v. *State Board of Taxation,* 37 Vr., 466; and has been repeatedly recognized and asserted by the courts. *Adams Express Co.* v. *Ohio,* 165 U. S., 194, and 166 U. S., 185.

2. The value created by uniting two or more plants or properties engaged in public service, whereby greater efficiency and reduced operating expenses produce better results at less cost; *Cleveland Ry. Co.* v. *Backus,* 154 U. S. at p. 444.
3. The rights or special franchises which confer the easement in or right of way through lands, indispensable to the construction and operation of the plant, and which also confer vitality and earning power on physical property.

It is important that liberal estimates be made of the cost of each item entering into total cost. Unless this is done it may be found that capital is exhausted before the plant is completed and established as a going business, a situation which may lead to difficulties owing to the inability oftentimes of a concern in such a predicament to float a new loan.

IV

HOW AND WHERE TO INCORPORATE

1. Organization of Corporations

Formerly corporations were organized by special act of legislature. A bill was passed by both houses and signed by the governor, after which the charter was formally accepted by the corporation. Subscriptions were then secured, stock issued and the usual routine of operations begun.

With the increasing multiplicity of corporations this method has become so slow and so wasteful of the legislature's time that it is now little used. Instead, the state legislature passes a general incorporation law giving the detailed procedure whereby a group of persons, known as incorporators, may, by executing the necessary papers, filing them with the proper officials, and paying the required fees, create a corporation. Such statutes now exist in all states and should be studied in detail before the task of incorporating is begun.

In some respects these laws are similar; and the procedure necessary to secure a charter is, in a general way, much the same in all states. Almost invariably the authorizing officer is the secretary of state. In matters of details, however, the procedure may differ considerably in different states, so that it is necessary to follow carefully the specific provisions of the law.

2. Where to Incorporate

Since differences exist in the incorporation laws of the various states, it may be desirable to make a comparison of the advantages and disadvantages of incorporating in different states. As a rule a concern should choose as the state of

incorporation the one wherein it expects to carry on its main business. This rule is departed from, however, if sufficient reason exists.

The accompanying tables (Form 10, pages 70-86) show the organization tax and annual franchise tax imposed by some of the leading incorporating states. For their use indebtedness is incurred to the Registrar and Transfer Company, 7 Dey Street, New York City.

In thinking of taxation it is well to remember that corporations may be affected by the following:

1. Organization tax
2. Annual franchise tax
3. Stock transfer tax
4. Inheritance tax
5. Property tax
6. Occupation tax.

Form 10

Incorporation Requirements of Some of the Leading States

Delaware

PAR STOCK			NON-PAR STOCK		
Capital Minimum $2,000	Organization Tax 1c. a share up to 20,000 shares; ½c. a share over 20,000 shares. (See Note A)	Annual Tax (Note B)	Shares Minimum 10	Organization Tax ½c. a share up to 20,000 shares; ¼c. a share over 20,000 shares	Annual Tax (See Note B)
$2,000 00		$5 00	20		$5 00
5,000 00		5 00	50		5 00
10,000 00	$10 00	5 00	100		5 00
50,000 00		10 00	500	$10 00	10 00
100,000 00		10 00	1,000		10 00

Form 10 *(Continued)*

Incorporation Requirements of Some of the Leading States

Delaware

PAR STOCK			NON-PAR STOCK		
Capital Minimum $2,000	Organization Tax 1c. a share up to 20,000 shares; ½c. a share over 20,000 shares. (See Note A)	Annual Tax (Note B)	Shares Minimum 10	Organization Tax ½c. a share up to 20,000 shares; ¼c. a share over 20,000 shares	Annual Tax (See Note B)
$125,000 00	$12 50	$20 00	1,250		$20 00
200,000 00	20 00	20 00	2,000		20 00
500,000 00	50 00	25 00	5,000	$25 00	25 00
1,000,000 00	100 00	50 00	10,000	50 00	50 00
3,000,000 00	250 00	100 00	30,000	125 00	100 00
4,000,000 00	300 00	125 00	40,000	150 00	125 00
5,000,000 00	350 00	150 00	50,000	175 00	150 00
50,000,000 00	2,600 00	1,275 00	500,000	1,300 00	1,275 00
Sundry fees for Recording etc., about $20	Above tax is on Authorized capital minimum $10	Above tax is on Authorized capital stock (See Note A)			

Corporations having at least fifty per cent of their capital stock issued and outstanding invested within the State are exempt from franchise tax.

Note A.—Any number of shares having par value, but having a total par value less than or equal to $100, shall be counted as only one share.

Note B.—The annual tax is figured as follows:

Authorized shares not exceeding 250 shares ..... $ 5.00
" " exceeding 250, not exceeding 1,000 shares 10.00
" " " 1,000 " " 3,000 " 20.00
" " " 3,000 " " 5,000 " 25.00
" " " 5,000 " " 10,000 " 50.00
Each 10,000 shares thereafter, or part thereof 25.00
Inactive companies pay only half of tax, but minimum tax 5.00

No license tax on foreign corporations is collected.

We act as registered agent for corporations in all States.

		REQUIREMENTS	
	1	Authorized capital	Minimum $2,000 or 10 shares non-par.
	2	Payment of capital	Money, services or property, etc.
	3	Par value of shares	Any amount or non-par
	4	Classes of stock	Any number
	5	Liability of stockholders	Unpaid balance on stock
	6	Meetings of stockholders	Outside of State if by-laws so provide
	7	Number of incorporators	Three or more
	8	Residence of incorporators	No requirements
	9	Qualification of incorporators	Natural persons
	10	Acknowledgment of charter	Notary Public
	11	Filing certificate	Secretary of State and Recorder of Deeds
	12	Beginning business	$1,000 subscribed or 10 shares non-par
	13	Duration	Perpetual or for term
	14	Principal office	Within State of Delaware
	15	Books at principal office	Duplicate stock and transfer books
	16	Branch offices	Anywhere as by-laws provide
	17	Number of directors	Three or more
	18	Qualification of directors	None
	19	Residence of directors	No requirements
	20	Meetings of directors	Outside if by-laws so provide
	21	Cumulative voting	If certificate so provides
	22	Filing annual report	On or before 1st Tuesday in January
	23	Filing tax report	March 15. (Need not be filed if doing no business in State.)
	24	Foreign corporations	File copy of charter and statement, fee $15. Appoint registered agent.

New York

Capital	Organization Tax on Par Stock 50c. per $1,000 Minimum, $10 (See Note)	Annual Tax		
$500 00		Domestic and foreign business corporations other than real estate or holding companies pay 4½% tax on income, or one mill on each dollar of capital stock. Real estate and holding companies pay tax based on dividends, or one mill on each dollar of net value of capital stock.	1	
1,000 00			2	
2,000 00	$10 00		3	
5,000 00			4	
10,000 00			5	
50,000 00	25 00		6	
100,000 00	50 00		7	
125,000 00	62 50		8	
200,000 00	100 00		9	
500,000 00	250 00		10	
1,000,000 00	500 00		11	
3,000,000 00	1,500 00		12	
4,000,000 00	2,000 00		13	
5,000,000 00	2,500 00		14	
50,000,000 00	25,000 00		15	
Sundry fees for recording certificate, etc., about $40	Above tax is on authorized capital		16	
			17	

License tax on foreign corporations one-eighth of one per cent on capital stock with par, or six cents per share on non-par stock employed within the State. Minimum $10.00.

Note.—Organization tax on non-par stock, five cents per share.

	REQUIREMENTS	
1	Authorized capital	As specified in charter
2	Payment of capital	Money, labor or property
3	Par value of shares	Any amount or no par
4	Classes of stock	Any number
5	Liability of stockholders	Unpaid bal. on subscription and debts owing employees
6	Meetings of stockholders	Within State of New York
7	Number of incorporators	Three or more
8	Residence of incorporators	Two-thirds in U. S., one in State of New York
9	Qualification of incorporators	Natural persons of full age
10	Acknowledgment of charter	Notary, Com'r of Deeds, etc.
11	Filing certificate	Secretary of State and County Clerk
12	Beginning business	After filing charter
13	Duration	Perpetual or for term
14	Principal office	Within State of New York
15	Books at principal office	Stock books and books of account
16	Branch offices	Anywhere
17	Number of directors	Three or more
18	Qualification of directors	Must be stockholders unless charter otherwise provides
19	Residence of directors	At least one a citizen and resident of N. Y. State
20	Meetings of directors	Anywhere unless restricted
21	Cumulative voting	If charter so provides
22	Filing annual report	None except tax report
23	Filing tax report—Income Tax Return on or before July 1	Real Estate and Holding on or before February 15.
24	Foreign corporations	File certified copy of charter, $52. Appoint Secretary of State agent, pay tax.

New Jersey

PAR STOCK			NON-PAR STOCK			
Capital Minimum $2,000	Org. Tax 20c per $1,000 Min. $25	Annual Tax 1/10 of 1% to $3,000,000 1/20 of 1% $3,000,000 to $5,000,000 Over $5,000,000 $50 per $1,000,000	Shares	Org. Tax 1c per Share	Annual Tax (See Note)	
						1
						2
$2,000 00		$2 00	20		$ 60	3
5,000 00		5 00	50		1 50	4
10,000 00	$25 00	10 00	100	$25 00	3 00	5
50,000 00		50 00	500		5 00	6
100,000 00		100 00	1,000		30 00	7
125,000 00		125 00	1,250		37 50	8
200,000 00	40 00	200 00	2,000		60 00	9
500,000 00	100 00	500 00	5,000	50 00	150 00	10
1,000,000 00	200 00	1,000 00	10,000	100 00	300 00	11
3,000,000 00	600 00	3,000 00	30,000	300 00	800 00	12
4,000,000 00	800 00	3,500 00	40,000	400 00	900 00	13
5,000,000 00	1,000 00	4,000 00	50,000	500 00	950 00	14
50,000,000 00	10,000 00	6,250 00	500,000	5,000 00	2,075 00	15
			A—Annual Tax			
Sundry fees $12.00	Above on Authorized Capital	Above on stock issued and outstanding	3c a share on 1st 20,000 shares 2c a share on next 10,000 shares 1c a share on next 10,000 shares			16
			½c a share on next 10,000 shares ¼c a share on balance			17

Manufacturing, mining and horticultural corporations are exempt from annual tax if at least fifty per cent of stock issued and outstanding is invested in mining, manufacturing or horticulture carried on within the State of New Jersey.

Note.—License tax on a foreign corporation is the same as tax for qualification of a New Jersey corporation in state of incorporation of such foreign corporation. Minimum $12. Foreign corporations pay no annual tax.

		REQUIREMENTS	
	1	Authorized capital	Minimum $2,000 or 20 shares non-par
	2	Payment of capital	Money, property, or labor
	3	Par value of shares	Any amount or non-par
	4	Classes of stock	Any number
	5	Liability of stockholders	Unpaid bal. on subscription
	6	Meetings of stockholders	At registered office in state or outside state if charter or by-laws so provide
	7	Number of incorporators	Three or more
	8	Residence of incorporators	No requirements
	9	Qualification of incorporators	Must be natural persons
	10	Acknowledgment of charter	Master of Chancery, Com'r of Deeds, Notary Public, etc.
	11	Filing certificate	County Clerk and Secretary of State
	12	Beginning business	$1,000 subscribed or 10 shares if non-par
	13	Duration	Perpetual or for term
	14	Principal office	Within New Jersey
	15	Books at principal office	Stock and transfer book
	16	Branch offices	Anywhere
	17	Number of directors	Three or more
	18	Qualification of directors	See Note
	19	Residence of directors	No requirements
	20	Meetings of directors	Anywhere as provided
	21	Cumulative voting	If charter so provides
	22	Filing annual report	Within 30 days after date of annual meeting
	23	Filing tax report	First Tuesday in May (on or before)
	24	Foreign corporations	File copy of charter, $12. See note preceding page.

NOTE.—Directors must be stockholders, or stockholders in another corporation owning at least 25% of the stock of the corporation.

Maine

PAR STOCK			NON-PAR STOCK			
Capital Minimum $1,000	Organization Tax Arbitrary	Annual Tax Arbitrary	Shares	Organization Tax	Annual Tax	
						1
$1,000 00			10			2
2,000 00	$10 00	$5 00	20	$10 00		3
5,000 00			50			4
10,000 00			100		$10 00	5
50,000 00			500			6
100,000 00	50 00		1,000			7
125,000 00		10 00	1,250	12 50		8
200,000 00			2,000	20 00		9
500,000 00		50 00	5,000	50 00	25 00	10
1,000,000 00	100 00	75 00	10,000	100 00	50 00	11
3,000,000 00	300 00	175 00	30,000	300 00	150 00	12
4,000,000 00	400 00	225 00	40 000	400 00	200 00	13
5,000,000 00	500 00	275 00	50 000	500 00	250 00	14
50,000,000 00	5,000 00	2,525,00	500,000	5,000 00	2,500 00	15
Sundry fees for recording, etc., about $20	Above Tax is on Authorized Capital (See Note A)	Above Tax is on Authorized Capital (See Note B)		Above Tax is at rate of one cent per share on authorized shares Minimum Tax $10.00	Above Tax is at rate of five mills per share on authorized shares Minimum Tax $10.00	16 17

Note A.—Organization Tax is $10 on capital of $10,000 or less. Beyond that and up to $500,000 the tax is $50, and for each $100,000 in excess of $500,000, $10 in addition.

Note B.—Annual Tax. When the authorized capital does not exceed $50,000 the annual tax is $5. When the capital does not exceed $200,000 the tax is $10. When it does not exceed $500,000 the tax is $50. When it does not exceed $1,000,000 the tax is $75. For each additional $1,000,000 or part thereof $50.

Inactive companies excused from taxes.

Note C.—Certificate must be approved by Attorney-General before being filed.

		REQUIREMENTS	
	1	Authorized capital	Minimum, $1,000.00. Maximum, unlimited
	2	Payment of capital	Money, stock, services, property, etc.
	3	Par value of shares	Any amount or non-par
	4	Classes of stock	Any number
	5	Liability of stockholders	Unpaid bal. on subscription and illegal dividends rec'd
	6	Meetings of stockholders	Within the State
	7	Number of incorporators	Three or more
	8	Residence of incorporators	No requirements
	9	Qualification of incorporators	Natural persons
	10	Acknowledgment of charter	Notary Public
	11	Filing certificate	Register of Deeds and Secretary of State—Note C
	12	Beginning business	After Certificate is filed
	13	Duration	Perpetual or for term
	14	Principal office	Within State
	15	Books at principal office	Stock register and corporate records
	16	Branch offices	Anywhere
	17	Number of directors	Three or more
	18	Qualification of directors	All stockholders
	19	Residence of directors	No requirements
	20	Meetings of directors	Anywhere, if by-laws so provide
	21	Cumulative voting	No statutory provision
	22	Filing annual report	None but tax report
	23	Filing tax report	On or before June 1
	24	Foreign corporations	File power of attorney, copy of charter, by-laws, etc. Fee, $10.00.

VIRGINIA

Capital As Specified in Charter	Organization Tax Arbitrary	Annual Registration Fee	Annual Tax Arbitrary	
$500 00				1
1,000 00				2
2,000 00	$10 00	$5 00	$10 00	3
5,000 00				4
10,000 00				5
50,000 00		10 00	20 00	6
100,000 00	20 00	15 00	40 00	7
125,000 00	25 00	20 00	60 00	8
200,000 00	40 00	20 00		9
500,000 00	100 00		100 00	10
1,000,000 00	200 00		200 00	11
3,000,000 00		25 00	400 00	12
4,000,000 00	600 00		500 00	13
5,000,000 00			600 00	14
50,000,000 00			5,100 00	15
				16
Sundry fees about $30	The above are on authorized capital. (See Note 1)			17

NOTE 1.—Organization tax, $10 on $50,000 or less. Beyond that up to $3,000,000, 20c for each $1,000 or fraction thereof. $3,000,000 or more, $600.

ANNUAL TAX.—Maximum capital $25,000 or under, $10. Over $25,000, not exceeding $50,000, $20. Over $50,000, not exceeding $100,000, $40. Over $100,000, not exceeding $300,000, $60. Over $300,000, not exceeding $500,000, $100. Over $500,000, not exceeding $1,000,000, $200. Over $1,000,000, not exceeding $50,000,000, $10 per $100,000 in excess of $1,000,000. Over $50,000,000, not exceeding $100,000,000, $75 per each $1,000,000 in excess of $50,000,000. Over $100,000,000, not exceeding $150,000,000, $50 per each $1,000,000 in excess of $100,000,000. Over $150,000,000, not exceeding $300,000,000, $25 per each $1,000,000 in excess of $150,000,000. Over $300,000,000, $10 per each $1,000,000 in excess of $300,000,000.

For purposes of Computation of Organization and Franchise Taxes, non-par shares are considered to be $100 each.

NOTE 2.—Company may dispose of its securities at such prices as it sees fit, provided it files with Corporation Commission statement of its financial plan.

		REQUIREMENTS	
	1	Authorized capital	As specified in charter
	2	Payment of capital	Money, property, services, etc.
	3	Par value of shares	As specified in charter or non-par
	4	Classes of stock	Any number
	5	Liability of stockholders	Unpaid subscriptions
	6	Meetings of stockholders	At place in State fixed by directors
	7	Number of incorporators	Three or more
	8	Residence of incorporators	No requirements
	9	Qualification of incorporators	No requirements
	10	Acknowledgment of charter	Officer qualified to take acknowledgment of deeds
	11	Filing certificate	Sec. of State, Corp. Comm. and Clerk of Court
	12	Beginning business	After certificate is filed
	13	Duration	Perpetual or for term
	14	Principal office	Within the State, appoint attorney
	15	Books at principal office	No requirements
	16	Branch offices	Anywhere
	17	Number of directors	Three or more
	18	Qualification of directors	Should be stockholders
	19	Residence of directors	No requirements
	20	Meetings of directors	Anywhere by-laws or charter provide
	21	Cumulative voting	If charter so provides
	22	Filing annual report	30 days after date for annual meeting
	23	Filing tax report	On or before April 15th
	24	Foreign corporations	File Power of Attorney, copy of charter. Fee based on capital.

Arizona

Capital As Specified in Charter	Organization Tax		Annual Tax		
	Par Stock	Non-par Stock	Par Stock	Non-par Stock	
$500 00	None See Below		None Annual Registration Fee of $15.00 Payable June each year and Annual Report to be filed in June each year, Fee $5.00.		1
1,000 00					1
2,000 00					3
5,000 00					4
10,000 00					5
50,000 00					6
100,000 00					7
125,000 00					8
200,000 00					9
500,000 00					10
1,000,000 00					11
3,000,000 00					12
4,000,000 00					13
5,000,000 00					14
50,000,000 00					15
Sundry organization fees, viz.: Filing Charter, $10.00; Appointment of agent, $5.00; Issuing Certificate, $10.00; Certified Copy of Certificate and Filing with Recorder, $10.00.					16
For Advertising Certificate see Note A.					17

Note A.—Within 3 months after filing charter, certificate must be published 6 times. Fee varies in different localities.

Note B.—Foreign corporations. File certified copy of charter, appoint agent, pay license fees, $35.00. Publish certificate 6 times.

		REQUIREMENTS	
	1	Authorized capital	Any amount
	2	Payment of capital	Money, property, or labor done
	3	Par value of shares	Any amount (or non-par)
	4	Classes of stock	Any number
	5	Liability of stockholders	Unpaid installments
	6	Meetings of stockholders	No statutory regulation
	7	Number of incorporators	Any number
	8	Residence of incorporators	No requirements
	9	Qualification of incorporators	No requirements
	10	Acknowledgment of charter	Notary Public, etc.
	11	Filing certificate	Corporation Commission and County Recorder
	12	Beginning business	When Commission issues certificate
	13	Duration	25 years
	14	Principal office	Within Arizona
	15	Books at principal office	No statutory provision
	16	Branch offices	Anywhere as by-laws provide
	17	Number of directors	Any number
	18	Qualification of directors	None
	19	Residence of directors	No requirements
	20	Meetings of directors	As by-laws provide
	21	Cumulative voting	Yes
	22	Filing annual report	June, Fee $5.00
	23	Filing tax report	None
	24	Foreign corporations	See Note B, preceding page

MARYLAND

Capital	Organization Tax (See Note A)	Annual Tax (See Note B)	
$500 00			1
1,000 00		$10 00	2
2,000 00			3
5,000 00	$20 00		4
10,000 00		15 00	5
50,000 00		55 00	6
100,000 00		80 00	7
125,000 00	25 00	100 00	8
200,000 00	40 00		9
500,000 00	100 00	120 00	10
1,000,000 00	200 00	150 00	11
3,000,000 00	500 00	250 00	12
4,000,000 00	650 00	300 00	13
5,000,000 00	800 00	350 00	14
50,000,000 00	1,700 00	1,400 00	15
$20.00 Sundry fees	Above on authorized capital	Above on stock issued, outstanding and/or subscribed for	16 17

License tax on a foreign corporation is based on amount of capital employed within the State; minimum tax $25. Rates will be quoted on application.

NOTE A.—The organization tax is figured as follows: Authorized capital not exceeding $1,000,000 20 cents per $1,000. $150 for each million or fraction exceeding $1,000,000 and not exceeding $5,000,000. $20 for each million or fraction exceeding $5,000,000.

NOTE B.—The annual tax is figured as follows: For first $5,000 or fraction $10. $1 per each $1,000 or fraction exceeding $5,000 and not exceeding $50,000. $1 per each $2,000 or fraction exceeding $50,000 and not exceeding $100,000. $20 additional exceeding $100,000 and not exceeding $250,000. $20 additional exceeding $250,000 and not exceeding $500,000. $30 additional exceeding $500,000 and not exceeding $1,000,000. $50 additional for each $1,000,000 or fraction exceeding $1,000,000 and not exceeding $10,000,000. $100 additional for each $5,000,000 or fraction exceeding $10,000,000. If no stock issued, outstanding or subscribed for, the tax is $10.

		REQUIREMENTS	
	1	Authorized capital	As specified in charter
	2	Payment of capital	Money, services or property, etc.
	3	Par value of shares	Any amount or non-par
	4	Classes of stock	Any number
	5	Liability of stockholders	Unpaid balance on subscriptions
	6	Meetings of stockholders	Within the State
	7	Number of incorporators	Three or more
	8	Residence of incorporators	No requirements
	9	Qualification of incorporators	Adult persons
	10	Acknowledgment of charter	Notary Public
	11	Filing certificate	State Tax Commission and Clerk of Superior Court or Circuit Court
	12	Beginning business	After certificate is filed
	13	Duration	Perpetual
	14	Principal office	Within State
	15	Books at principal office	Duplicate stock ledger unless by-laws provide otherwise
	16	Branch offices	Anywhere as by-laws provide
	17	Number of directors	Three or more
	18	Qualification of directors	None
	19	Residence of directors	No requirements
	20	Meetings of directors	Outside if by-laws so provide
	21	Cumulative voting	If by-laws so provide
	22	Filing annual report	On or before March 15th
	23	Filing tax report	None except Annual Report
	24	Foreign corporations	File certified copy of charter and statement. Fee $25. Appoint registered agent

Colorado

PAR STOCK			NON-PAR STOCK			
Capital No Minimum	Org. Tax $20 for first $50,000 or fraction; 20c per $1,000 in excess	Annual Tax $10 for first $100,000 or fraction; 10c per $1,000 in excess	Shares	Org. Tax $20 for first $50,000 or fraction; 20c per $1,000 in excess (See Note A)	Annual Tax $10 for first $100,000 or fraction; 10c per $1,000 in excess (See Note A)	
$500 00			500			1
1,000 00			1,000			2
2,000 00			2,000			3
5,000 00	$20 00	10 00	5,000	$20 00	$10 00	4
10,000 00			10,000			5
50,000 00			50,000			6
100,000 00	30 00		100,000	30 00		7
125,000 00	35 00	12 50	125,000	35 00	12 50	8
200,000 00	50 00	20 00	200,000	50 00	20 00	9
500,000 00	110 00	50 00	500,000	110 00	50 00	10
1,000,000 00	210 00	100 00	1,000,000	210 00	100 00	11
3,000,000 00	610 00	300 00	3,000,000	610 00	300 00	12
4,000,000 00	810 00	400 00	4,000,000	810 00	400 00	13
5,000,000 00	1,010 00	500 00	5,000,000	1,010 00	500 00	14
50,000,000 00	10,010 00	5,000 00	50,000,000	10,010 00	5,000 00	15
Sundry fees $25	Above on authorized capital	Above on authorized capital	Sundry fees $25	Above on authorized capital	Above on authorized capital	16 17

Note A.—Non-par shares are considered to be of a par value of $1 each for purposes of computation.

	REQUIREMENTS	
1	Authorized capital	Any amount
2	Payment of capital	Money, property or labor
3	Par value of shares	Any amount, not exceeding $100, or non-par
4	Classes of stock	Any number
5	Liability of stockholders	Unpaid balance on subscription
6	Meetings of stockholders	Outside of state if charter so provides
7	Number of incorporators	Three or more
8	Residence of incorporators	No requirements
9	Qualification of incorporators	No requirements
10	Acknowledgment of charter	Notary public or other officer qualified to take acknowledgment of deeds
11	Filing certificate	Secretary of State—Recorders of Deeds
12	Beginning business	When certificate of authority is issued
13	Duration	Not to exceed twenty years
14	Principal office	Within State
15	Books at principal office	As specified in charter
16	Branch offices	Anywhere as by-laws provide
17	Number of directors	Three or more
18	Qualification of directors	Must be stockholders
19	Residence of directors	No requirements
20	Meetings of directors	Outside state if charter provides
21	Cumulative voting	If charter so provides
22	Filing annual report	Within 60 days of January 1st
23	Filing tax report	None except annual report
24	Foreign corporations	File certified copy charter; certified copy corporation laws home state; affidavit of capital; appoint agent; pay tax based on amount of authorized capital or amount employed in State

3. Agreements Preliminary to Incorporation

Sometimes agreements are entered into preliminary to the formation of a corporation. Forms 11 and 12 illustrate such agreements.

Form 11

Agreement Preliminary to Formation of Manufacturing Company

This agreement made and entered into by and between The .....Company, a corporation organized and doing business under the laws of the State of....., and having its chief office at.....in said state hereinafter called The.....Company; John Doe, Richard Roe and Lawrence Doe trading as Doe, Roe and Company at ....., State of.....; and the Manufacturing Company, a company organized and operating under the laws of the State of....., and having its main office at....., in said state.

Witnesseth:

Whereas the parties to this agreement are of the belief that the cost of manufacturing and sale of the products which they produce can be materially reduced by bringing their various properties under one management and that other economies would result from such concentration, and

Whereas the parties to this agreement are desirous of establishing a new corporation for the purpose of taking over the existing businesses and appliances upon the following terms:

It is hereby agreed that, in consideration of the sum of $10.00 paid by each of the respective parties into the hands of the other, the receipt whereof is hereby acknowledged:

First. Each of the parties to this agreement does thus covenant and agree for himself, his successors and assigns with the other parties that they will assign, set over and transfer unto a corporation to be organized hereafter all of their plants, businesses, franchises, good will and other property of every kind and description whatsoever, except notes, and accounts receivable, immediately upon the organization of the proposed corporation; also that the title to all such property transferred shall be free from all liens and encumbrances of every kind whatsoever.

Second. In consideration of such transfers of property by the

parties to this agreement, it is furthermore understood that they shall accept in payment therefor the full paid and non-assessable preferred stock of the proposed corporation, such preferred stock to have a par value of One Hundred Dollars ($100) per share and of which there shall be Six Million Dollars ($6,000,000) par value, as follows:

The.....Company 30% or $1,800,000; Doe, Roe and Company 40% or $2,400,000; and The..... Manufacturing Company 30% or $1,800,000; said preferred stock to be given a non-cumulative preference of 6% annual dividends payable quarterly on the first day of January, April, July and October, respectively.

Third. It is mutually understood and agreed that the common stock of the proposed corporation shall be Ten Million Dollars ($10,000,000) consisting of 100,000 shares of a par value of One Hundred Dollars ($100) which shall be sold at such price not below par value as the board of directors may prescribe and under such conditions as to assessment as the board of directors may prescribe.

Fourth. It is mutually understood and agreed that each of the parties subscribing to this agreement shall have the right, until July 1, 19...., to subscribe for as much of the common stock of the proposed corporation as they may desire, providing only that they do not exceed 50% of the ratio established in their interest in the preferred stock of said company.

In Witness whereof and of the foregoing the parties hereto have duly signed this instrument on this third day of April, 19..., in triplicate.

Witnesses:

The.....Company
By.....President
Doe, Roe and Company by John Doe
The.....Manufacturing Company
By.....President

FORM 12

AGREEMENT TO ORGANIZE A CORPORATION

Memorandum of agreement made this tenth day of May, 19..., between E. T. S. of Chicago, Illinois, party of the first part, and S. J. L. of St. Louis, Missouri, party of the second part. For and in consideration of the mutual covenants and agreements hereinafter expressed said parties do mutually agree as follows:

First. The said E. T. S., acting for both parties, will proceed at once to organize a corporation under the laws of the State of Illinois, to be known as the Merchants Transfer Company of Chicago, with a capital stock of Two Hundred Thousand Dollars ($200,000), such corporation to have the usual and customary powers granted to transportation companies by the statutes of the State of Illinois.

Second. The board of directors of said corporation shall be composed of seven members and shall for the first year consist of the following persons:

.....
.....
.....

For the first year the officers of the corporation shall be:

President .....
Vice President .....
Secretary .....
.....

Third. The subscribers to the capital stock of said corporation are hereby agreed upon as follows:

E. T. S.	$50,000
S. J. L.	$25,000

etc.

Fourth. Upon the formation of said corporation, said E. T. S. will execute a bill of sale conveying to said new company the steamship Colonial with all her supplies, materials and equipment.

Fifth. The said S. J. L. hereby agrees to advance to said new corporation the sum of $50,000 in cash to be employed as working capital or otherwise as may seem fit.

Sixth. The said new corporation shall execute a mortgage on its real property to said S. J. L. in the sum of $50,000. Said mortgage shall contain the usual provisions and agreements contained in such instruments, but shall provide expressly against any personal liability of either of the parties to this agreement on such indebtedness. Such indebtedness shall be given the form of a series of five notes by said Company to said S. J. L., each to be of equal rank under the mortgage and to be payable at such day or days as may be agreed upon hereafter. Said notes shall bear interest at the rate of 6% per annum.

Executed and dated this tenth day of May, A. D., 19...

E. T. S. (Seal)
S. J. L. (Seal)

4. Procedure to Incorporate

In New York the steps to be taken to incorporate are as follows (*Corporation Manual,* 28th ed., p. 852):

1. Preparation, execution and acknowledgment of certificate or incorporation.
2. Filing of original certificate of incorporation in the office of the secretary of state.
3. Payment of organization fees and taxes to secretary of state.
4. Filing and recording of duplicate original or certified copy of certificate of incorporation in the office of the county clerk of the county in which the principal office or place of business is to be located.
5. Meeting of the incorporators.
6. Meeting of the directors.
7. Registration in office of state tax commission under Stock Transfer Act.

The procedure differs as to detail in different states and it is necessary to consult the state laws in any event.

5. The Certificate of Incorporation

Persons wishing to organize a corporation must first draw up a certificate of incorporation in accordance with the laws of the state in which they wish to incorporate. In New York article two of the *Stock Corporation Law,* Sec. 5, prescribes the things which the certificate must contain, as follows:

5. Incorporation. Three or more persons may become a stock corporation for any lawful business purpose or purposes except to do in this state any business for which a corporation may be formed under or pursuant to the banking law, the insurance law, the railroad law, or the transportation corporations law, by making, subscribing, acknowledging and filing a certificate which shall be entitled and endorsed "Certificate of incorporation of ....., pursuant to article two of the stock corporation law" (the blank space being filled in with the name of the corporation) and which shall state:

1. The name of the proposed corporation.
2. The purpose or purposes for which it is to be formed.
3. Either the amount of the capital stock and the number and par value of the shares of which it is to consist, or, if the cor-

poration is to issue shares without par value, the statements required by section twelve.

4. If the shares are to be classified, the number of shares to be included in each class and all of the designations, preferences, privileges and voting powers or restrictions or qualifications of the shares of each class.

5. The city, village or town and the county in which the office of the corporation is to be located.

6. Its duration.

7. The number of its directors, not less than three.

8. The names and post-office addresses of the directors until the first annual meeting of the stockholders, and if such address shall be in a city, the street and number or other particular description thereof. The number of the directors so named must be the number so stated pursuant to the last preceding subdivision of this section.

9. The name and post-office address of each subscriber of the certificate of incorporation, and a statement of the number of shares of stock which he agrees to take. If the address of any such subscriber shall be in a city, the street and number or other particular description thereof.

10. That all of the subscribers of the certificate are of full age, that at least two-thirds of them are citizens of the United States, and that at least one of them is a resident of the state of New York; that at least one of the persons named as a director is a citizen of the United States and a resident of the state of New York.

11. If meetings of the board of directors are to be held only within the state the certificate or by-laws must so provide.

Thus if three men form a corporation with a capital stock of $500,000 to manufacture electrical equipment a form of certificate complying with the specifications of the New York law would be as follows:

CERTIFICATE OF INCORPORATION OF THE ELECTRICAL MANUFACTURING CO., INC.

(According to Article 2 of the New York Stock Corporation Law)

We, the undersigned, in order to form a corporation pursuant to Article two of the Stock Corporation Law of the State of New York, certify:

First: The name of the proposed corporation shall be Electrical Manufacturing Company, Inc.

Second: The purpose of the proposed Company shall be to manufacture, and deal in electrical equipment of all kinds.

(This clause may be expanded to any desired length. In some instances the purposes for which the company is established are set forth at great length.)

Third: The amount of capital stock of the corporation shall be $500,000, consisting of 500 shares, each having a par value of $100.

Fourth: The capital stock shall consist of one class only, and shall be known as common stock.

Fifth: The principal office of the corporation shall be located in the City of Buffalo, County of Erie, State of New York.

Sixth: The duration of the corporation shall be perpetual.

Seventh: The corporation shall have three directors.

Eighth: The names and addresses of the directors are as follows:

John Jones	16 East Blvd., Buffalo, N. Y.
Andrew Myer	121 Delaware Ave., Buffalo, N. Y.
Clarence Mason	365 Easton Street, Buffalo, N. Y.

Ninth: The names and addresses of the subscribers to the certificate, together with a statement of the number of shares of stock of the corporation which each subscribes to, follows:

John Jones	16 East Blvd., Buffalo, N. Y.	300 shares
Andrew Myer	121 Delaware Ave., Buffalo, N. Y.	100 shares
Clarence Mason	365 Easton Street, Buffalo, N. Y.	100 shares

Tenth: All subscribers hereto are of full age, at least two-thirds of them are citizens of the United States, at least one is a resident of the State of New York, and at least one of the persons designated as directors is a citizen of the United States and a resident of the State of New York.

In witness whereof we have made, signed, and acknowledged this certificate on the 11th day of March, in triplicate.

(Signed) John Jones
Andrew Myer
Clarence Mason

This certificate must be acknowledged before a notary and one copy thereof sent to the Secretary of State, Albany, N. Y., accompanied with the required fee. Another check to cover the organization tax must be sent to the State Treasurer, Albany, N. Y. This amounts to 50 cents per $1,000 of authorized capital stock.

The certificate is examined by the office of the Secretary of State and, if found satisfactory and without flaw, it is filed and the person sending it is notified to that effect. The State Treasurer sends this same person a receipt which he attaches to another one of the copies of the certificate of incorporation, filing same in the office of the county clerk of the county in which the corporation will have its main office. It is customary to retain the third copy of the certificate of incorporation in the files of the corporation, after having it certified as correct by the Secretary of State.

The next step is to hold meetings of stockholders and directors to arrange for active participation in business. Among things to be done at these meetings are the purchase of land, buildings and other property, adoption of by-laws, adoption of a corporate seal, and elections of officers.

6. Legal Requirements, Fees, Etc.

It is impossible to reproduce the requirements as to recording, fees, meetings, etc., in all states. Following are data for three representative states.

Illinois—Legal requirements calling for special attention in Illinois are as follows:

1. The Certificate of Incorporation must be filed for record within ten (10) days after its issuance by the Secretary of State. Failure so to do is a misdemeanor and subjects the corporation, officer, or agent, responsible for such failure, to a fine of not exceeding five hundred dollars ($500.00). Though not obligatory, it is advisable to file the Certificate of Incorporation for record prior to the holding of the first meeting of the Board of Directors of the corporation.

2. The Board of Directors must hold its first meeting within sixty (60) days after the issuance of the Certificate of Incorporation.

3. An Annual Meeting of the Stockholders must be held within ninety (90) days after the close of each fiscal year.

4. Each stock certificate must have stamped or printed thereon, when issued, the amount actually received by the corporation for the shares of capital stock represented by such certificate. It is probable that a stock certificate, reciting that the shares

represented thereby are "fully paid and non-assessable," meets the requirements of "The General Corporation Act" in that regard.

5. The Statement required by Section 28 of "The General Corporation Act" must be filed in the Office of the Secretary of State, on the form prescribed by the Secretary of State therefor, within ninety (90) days after the issuance of any share of capital stock. In the event of failure to so file such Statement, the person to whom such share has been issued may recover the amount paid thereon together with interest and his reasonable attorney fees.

6. Subscription for all of the shares of the capital stock of the corporation "which it is proposed to issue at once" should be made in and by the Initial Subscription Agreement. All of the persons to be named under the designation "the names and addresses (giving town or city, street and number) of the subscribers to the capital stock and the amount subscribed and paid in by each" appearing in the form of Statement of Incorporation prescribed by the Secretary of State should be parties to the Initial Subscription Agreement. The details of respective subscriptions as made in the Initial Subscription Agreement and as set forth in the Statement of Incorporation should correspond.

7. The meeting of the Subscribers who are parties to the Initial Subscription Agreement must be held and payment by each of the said Subscribers of the amount, which the Statement of Incorporation is to indicate as having been paid by such Subscriber, must be made to the Trustee, selected and designated at the meeting aforesaid to receive the same, before the Statement of Incorporation is acknowledged. It is entirely proper to designate the attorney handling the incorporation as Trustee unless he be one of the Subscribers or Incorporators of the company.

8. A corporation organized under "The General Corporation Act" is expressly prohibited from accepting or taking promissory notes in payment for shares of its capital stock. This is an attempt to avoid the evil results that have arisen where notes have been accepted in settlement.

California—Fees prescribed by the Secretary of State of California are as follows. These are subject to revision at any time, so that those seeking to incorporate in California should request revised schedules of fees.

(Except as otherwise noted the fees listed herein are authorized by Section 409, Political Code.)

Fees in Connection with the Incorporation of Domestic Corporations

The following fees are always payable at the time the articles of incorporation are filed with the Secretary of State:

Filing fee, based on the authorized capital stock, as follows:

$25,000 or less	$15.00
Over $25,000 and not over $75,000	25.00
Over 75,000 and not over 200,000	50.00
Over 200,000 and not over 500,000	75.00
Over 500,000 and not over 1,000,000	100.00

When over $1,000,000, $50 for each $500,000 or fraction thereof.

For the purpose of fixing the above fee, shares without par value are deemed to have a par value of $10.

Corporations having no capital stock, except cooperative corporations and associations—$5.00.

Cooperative corporations and associations—$15.00.

Fee for recording articles of incorporation—20c per hundred words.

Fee for issuing certificate of incorporation—$3.00.

Fees for certified copies:

If applicants for certified copies of articles of incorporation furnish the copies they will be certified at the rate of $2.50 per copy; if the copies are made by this office the fee for each copy will be $2.00 plus 20c per hundred words for typewriting.

No license tax is payable at the time of filing Articles of Incorporation. The Corporation License Act was repealed by Chapter 221, Statutes of 1927.

Fees in Connection with the Qualification of Foreign Corporations

The following fees are always payable at the time the articles of incorporation of a foreign corporation are filed with the Secretary of State:

Filing fee $100.00 in all cases, except that foreign corporations organized for educational, religious, scientific or charitable purposes and having no capital stock, and foreign non-profit corporations are required to pay a filing fee of $5.00. (Section 405, Civil Code.)

Fee for recording articles of incorporation—20c per hundred words. (Amendments are not required to be recorded.)

Fee for filing designation of person on whom process may be served—$5.00.

Fees for certified copies:

If applicants for certified copies of articles of incorporation furnish the copies they will be certified at the rate of $2.50 per copy, if copies are made by this office the fee for each copy will be $2.00 plus 20c per hundred words for typewriting.

No certificate is required to be issued as evidence of the fact that a foreign corporation has qualified for the transaction of intrastate business in the State, but such a certificate will be issued, upon request, the fee for which is $3.00.

No fee is required for filing a certified copy of any document which is in the nature of an amendment to the Articles of Incorporation or Charter of a foreign corporation.

No license tax is payable at the time a foreign corporation qualifies, or thereafter. The Corporation License Act was repealed by Chapter 221, Statutes of 1927.

Miscellaneous Fees

For making a copy of any record of his office, per hundred words	$0.20
For comparing any copy with the record, per each hundred words	.05
For affixing certificate and seal of state to copy	2.00
Filing certificate of increase of capital stock, for each $50,000 or fraction thereof, of such increase	5.00
Filing certificate of decrease of capital stock	5.00
Filing certificate of change of principal place of business	5.00
Filing certificate of increase or decrease of number of directors	5.00

Filing amended articles of incorporation changing the stock of a California corporation from shares having no nominal or par value to shares having a par value, or amended articles of incorporation authorizing a California corporation which has no capital stock to issue shares of capital stock having a par value, $5.00 for each $50,000 of capital stock so authorized, or fraction thereof, but in no case less than $15.00.

Filing amended articles of incorporation of a California corporation which provide for additional shares having no nominal or par value, $5.00 for each 5,000 additional shares, or fraction thereof, but in no case less than $15.00.

Filing amended articles of incorporation changing the stock of a California corporation from shares having a par value to shares having no nominal or par value, $5.00 for each 5,000 shares, or fraction thereof, therein provided for, but in no case less than $15.00.

Filing amended articles of incorporation of a California corporation, except as above provided for, $5.00.

No fee required for filing a certified copy of any document which is in the nature of an amendment to the articles of incorporation or charter of a foreign corporation.

Filing certificate of creation or increase of bonded indebtedness $5.00

Filing certificate of election to continue existence under Civil Code 5.00

Filing certificate of extension of term of existence—based on authorized capital stock, as provided in schedule of fees for filing articles of incorporation of domestic corporations. (Section 401, Civil Code and Section 7, Article XII, Constitution of California.)

Filing copy of decree dissolving corporation..... 5.00

Filing copy of decree changing name of individual or corporation 5.00

Filing a certified copy of a permit issued by the Commissioner of Corporations pursuant to section 309½, Civil Code... 5.00

Issuing certificate of filing of any document..... 3.00

Issuing certificate authenticating signature of public official. 2.00

Attesting notarial and other commissions, passports or other documents signed by the Governor, except commissions to non-salaried state officers, military commissions, pardons and extradition papers..... 5.00

Recording official bond..... 5.00

Issuing certificate reciting facts shown by office records, unless otherwise provided..... 2.00

Filing claim to trade-mark or trade name and issuing certificate 5.00

Registering name of farm, ranch or villa (Section 1, Chapter 87, Statutes 1911)..... 1.00

Filing application and issuing architect's certificate (Section 3, Chapter 212, Statutes 1901)..... 5.00

For each patent for land issued by the Governor, per one hundred and sixty acres or fraction thereof..... 1.00

For filing a printed or typewritten copy of any lecture, sermon, address, dramatic composition, story or motion picture scenario (Section 3202, Political Code)..... 5.00

Live stock auctioneer's license (Section 2, Chapter 649, Statutes 1921) 25.00

Collection Agencies—(Section 6, Chapter 485, Statutes 1927.)—

For initial license..... 25.00

For renewal license.....15.00
Filing certificate of filing of mortgage on migratory chattels or of assignment or discharge thereof..... .50
Filing certificate of filing of contract of conditional sale of live stock or poultry or of assignment or discharge thereof (Chapter 796, Statutes 1927)..... .50
Contracts for conditional sale of railroad or street railway equipment or rolling stock and declarations of performance (Section 2, Chapter 601, Statutes 1913)—
Filing 5.00
Recording, per hundred words..... .20

No member of the legislature, or state officer, may be charged a fee for a certified copy of any law, or resolution, passed by the legislature, relative to his official duties. (Section 409, Political Code.)

No fee for the performance of any official service, or for the filing of any document, may be collected from the state, or from any county, city, or city and county, or from any public officer or board or body acting in his, or her, or its official capacity on behalf of the state, or any county, city, or city and county. (Section 4295, Political Code.)

New York—The following "Aids to Practice" are promulgated by the Secretary of State of New York State:

Names. Before transmitting a certificate of incorporation for filing, ask the Secretary of State by letter or telegram (not by telephone) whether the proposed corporate name is available. Unless the name is descriptive of the business to be conducted, the letter should state the nature of such business to aid the Secretary of State in determining its availability.

It is well to submit a list of three or more names, arranged in order of preference, so the searching clerk can discontinue the search when the first available name is found. If there be insistence upon the searching of several names so the incorporators may thereafter select one from those found to be available, the order for the search must be accompanied by payment of $6.90 for each name, to cover the statutory fee of 6 cents a year per name. The corporation records extend over a period of 115 years. Do not allow clients to incur expense for printing stock certificates, stationery, etc., until they have the receipts showing that the certificate of incorporation has been filed. The law does not permit the reservation of names for prospective corporations.

The rule governing payment for searches is the same when information is required concerning corporations already formed.

That is, a single search will be made without charge, but if a number of searches is required the order must be accompanied by the full statutory fee. The search on each name will then be commenced with the current year and carried backward and if the date of incorporation is ascertained before the entire period covered by the record is searched, the amount of the overpayment will be refunded. The result of the search will show what papers have been filed, the date of filing and (if requested) the fee for a certified copy of each paper. The office does not furnish extracts from papers on file nor the names of the signers thereof.

Form of Certificate. Every certificate of incorporation and every amendatory certificate must be entitled (at top of first page) and endorsed (on back of cover) with description of nature of certificate, the exact name of the corporation and a citation of the statute under which the instrument is offered for filing.

Fees and Taxes. Organization taxes and filing fees are payable to the Secretary of State in advance. Uncertified checks, other than bank cashiers' checks, are not accepted.

When ordering certified copies or certificates under seal, always enclose remittance to cover the fees prescribed by section 26 of the Executive Law.

Every fee must be paid in advance. Orders for certified copies are listed as received and are filed in rotation. No exception can be made to this practice.

In sending several certificates of different kinds, mail each one separately and enclose with each a letter and a remittance to cover filing fee and tax, if any. If several certificates of different kinds, or relating to different companies, are mailed under a single cover with all fees and taxes included in one check, a delay of twenty-four hours is apt to result, as some of the papers may take different courses from the others on their way through the hands of the cashier, examiners, indexers, etc.

Inquiries. Every effort is made to examine and file, or to return as the case may be, every certificate within twenty-four hours of its receipt, but it is not always possible to accomplish that result, as the volume of mail varies from day to day and new questions of law are being continually presented which cannot be answered hastily. Attorneys are earnestly requested to wait at least forty-eight hours after mailing certificates before inquiring as to whether they have been filed, and if such inquiry must then be made, to telegraph rather than telephone.

Communications. Please address ALL communications to the Secretary of State. Compliance with this request is essential to prompt and satisfactory service.

7. Powers Granted to a Corporation

As shown in the preceding section certain powers are specifically granted in the charter. In addition, however, it is understood that a corporation possesses certain powers whether or not specified in the charter. These are sometimes termed common law powers. Among them are: the right to sue and be sued, the right to deal in property essential to the work of the corporation, the right to make contracts, and to have a corporation seal.

In addition to these common law powers certain other powers may be granted by statute to all or to given classes of corporations coming within the jurisdiction of the state in question.

Finally, as noted, there are the special powers granted to each corporation by its own charter. In connection with the granting of such powers it has been necessary to consider extensively the theory underlying the purpose and functions of corporations. Formerly corporations were limited to one specified activity, but most states have become increasingly liberal in this respect. The charter of the United States Steel Corporation is illustrative of this tendency.

The charter is a formal instrument, difficult to alter, hence it is highly important that the powers which it is desired to secure for a corporation be set forth therein in the most explicit manner possible.

8. Nature of Corporate Charters

A charter is not a franchise, since it does not grant powers to one corporation which it would not grant to another. Neither does it in any respect resemble a contract as the latter is popularly conceived. However, the courts construe it as a contract between the corporation and the state which authorizes it, as well as between the corporation and its stockholders.

The charter must contain no provisions which are contrary to the laws or constitution of the state which grants it; if it

does, such provisions are void. It is the duty of the state official who reviews the charter application to see that all provisions therein contrary to the law or constitution of the state be stricken out, or that the application be rejected. If any such illegal provisions escape the notice of the reviewing officer they are nevertheless void and the corporation cannot enforce them.

Granting charters by special act of legislature resulted in many abuses. Nevertheless in those states where the practice is not prohibited they may still be secured by putting the charter application in the form of a bill to be passed by the legislature.

9. Various Charter Provisions

Among important charter provisions are those stating the amount and kind of capital stock, the duration of the corporation, the number and names of the board of directors, and the principal office or place of business, or both.

If there is but one kind of capital stock, it is then regarded as common, and the amount of the par value thereof as well as the number of shares must be indicated. The amount must be fixed. It cannot be stated as a variable between two amounts, as, for example, not less than $100,000 nor more than $200,000.

If the stock is divided into two or more classes by having certain preferences granted to one class thereof the various qualifications of the two or more classes of stock must be specified. With but few exceptions any alteration in either the amount or the classes of the capital stock can be accomplished only by charter amendment.

Shares without par value are becoming increasingly popular, probably because they do away with the meaninglessness of par value. Most states now have laws permitting the issuance of no-par stock and also enabling corporations already organized to change from the par value to the no-par value form.

It is customary to require that the location of the principal

office of the corporation be specified in the charter. Also it may be necessary to specify the location of the principal business of the corporation.

Most states require a specific statement as to the duration of the corporation, although in some states this is understood to be perpetual unless some limit is stated. Some states limit the duration of corporations by statute. For the status in leading incorporating states see Form 10. In most states the duration of a corporation may be made perpetual unless it is desired to place a limitation thereon, in which event this may be stated in the charter. In general, also, perpetual duration is advantageous to most corporations and a privilege not likely to meet with abuse.

It is usually required that the number, names and addresses of the directors be specified in the charter. In most states the minimum number of directors is specified in the statutes; in some instances the maximum number also is so specified. Only the names and addresses of the directors for the first period can be required, since later on these are subject to change.

It cannot be too greatly emphasized that the statutes of the state of incorporation be consulted as to all requirements. Among special requirements in certain states are those touching on duties of officers, classes of capital stock, limitations on corporate indebtedness, and so forth.

Once all requirements of the state laws in question have been ascertained an effort should be made to comply with these in every detail. By so doing troublesome litigation will be avoided.

10. Subscription Agreement

In a set of instructions issued by the Secretary of State of the State of Ohio it is stated that on the day ordered for the opening of books of subscription the subscribers to the articles of incorporation should have such books prepared, and that if the books have been ordered opened at one place only, but one such book will be needed; otherwise as many

books as there are places will be required. It is suggested also that ordinarily a book of from 12 to 20 pages will be sufficient. The first page of said book should be entitled and ruled essentially as follows:

FORM 13

SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE ..... COMPANY

We, the undersigned, do hereby severally subscribe for the number of shares of the capital stock of The..... Company set opposite our respective names, and do hereby agree to pay therefor the sum of $..... per share.

Names	Shares
.....	.....
.....	.....
.....	.....
.....	.....

The following extract from the official instructions of the Secretary of State may be helpful:

Moneys paid in on subscriptions should be charged to capital on the business ledger of the corporation. On such business ledger, a stock subscription account should be opened with each subscriber, and when the amount of his subscription is all paid in, the account should be closed. Stockholders who have paid in the whole of their subscriptions are entitled to receive certificates of their paid-up stock; and the president and secretary of the corporation should, on demand, execute and deliver to each such stockholder a certificate showing the true amount of the stock by him held in the corporation. It is the duty of the directors, when organized, to keep a record of all stock subscribed and transferred, and of the secretary or recording officer to register therein all subscriptions and transfers of stock. For that purpose books are required to be kept, and whenever any certificate or certificates of stock are assigned and delivered by a stockholder, the assignee shall be entitled, on demand, to have the same duly transferred upon said books, by such secretary or recording officer, whose duty it shall be at the same time to enroll therein also the name of said assignee as stockholder.

11. State Forms Relating to Incorporation, Etc.

To reproduce all state forms relating to corporations is not the purpose of this volume. As a rule the complete set of

Form 14

Declaration for Charter, State of South Carolina

Declaration for Charter

State of South Carolina,
County of_____

To the Secretary of State of South Carolina:

*The Undersigned Declarants*_____

Give Name and Postoffice address

by this their Declaration would respectfully certify:

1st. That their names and residences are as above given.

*2nd. That the name of the proposed corporation is*_____

Give a name different from any existing corporation

*3rd. That the principal place of business is*_____

*4th. That the general nature of the business which it proposes to do is*_____

Use general terms.

*5th. That the amount of capital stock is*_____ *dollars, payable*_____

*6th That the number of shares into which the capital stock is divided is*_____ *of the par value of*_____

*7th That, after due notice, a meeting of the subscribers was held on*_____ *at which a majority of all stock in value being present in person or by proxy, the following were elected directors:*

Name must be given in County where the corporation has its principal place of business

*8th. That subsequently there was elected as President*_____ *as Vice-President*_____; *as Secretary*_____; *as Treasurer*_____

Form 15

Charter by the Secretary of State, the State of South Carolina

The State of South Carolina
EXECUTIVE DEPARTMENT

CHARTER
BY THE SECRETARY OF STATE

WHEREAS,

did on the day of , 192 , file with the Secretary of State a written Declaration signed by themselves, setting forth:

FIRST: That their names and residences are as above given.

SECOND: That the name of the proposed corporation is

THIRD: That the principal place of business is

FOURTH: That the general nature of the business which it is proposed to do is

FIFTH: That the amount of the capital stock is dollars, payable

SIXTH: That the number of shares into which the capital stock is divided is of the par value of

SEVENTH: That, after due notice, a meeting of the subscribers was held on the day of 192 , at which a majority of all stock in value being present in person or by proxy, the following were elected directors:

EIGHTH: That subsequently there was elected as President, as Vice President, ; as Secretary, as Treasurer,

NINTH: That all requirements of Chapter L, Article I, of the Civil Code of South Carolina, 1922, and all amendments thereto have been duly and fully complied with, 50 per cent. of the aggregate amount of the capital stock having been subscribed by *bona fide* subscribers, 20 per cent. of the capital stock subscribed having been paid to the Treasurer, and three days' public notice of the intention to file this Declaration with the Secretary of State having been given in a newspaper published in the County of

NOW, THEREFORE, I, W. P. BLACKWELL, Secretary of State, by virtue of the authority in me vested by the aforesaid Code and Acts amendatory thereto, do hereby certify that the said Company has been fully organized according to the laws of South Carolina, under the name and for the purposes indicated in their written declaration, and that they are fully authorized to commence business under their charter; and I do hereby direct that a copy of this certificate be filed and recorded in the office of the Register of Mesne Conveyance or Clerk of Court in each county where such Corporation shall have a business office.

GIVEN under my hand and the seal of the State, at Columbia, this day of in the year of our Lord one thousand nine hundred and and in the one hundred and fifty year of the Independence of the United States of America.

(SEAL)

Secretary of State.

FORM 15 *(Continued)*

9th. That all requirements of Chapter L, Article 1. of the Civil Code of South Carolina, 1922, and all amendments thereto, have been duly and fully complied with, 50 per cent. of the aggregate amount of the capital stock having been subscribed by bona fide subscribers, 20 per cent. of the capital stock subscribed having been paid to the Treasurer, and three days' public notice of the intention to file this Declaration with the Secretary of State having been given in _____ *a newspaper published in the County of* _____

Wherefore, your declarants pray that a charter be issued in the name and for the purposes indicated in their written declaration.

(SIGN HERE)

_____
_____
_____
_____
_____
_____ } *Corporators*

Date _____ *19*____

File No._____

DECLARATION
IN RE

FILED AND CHARTER GRANTED

Secretary of State

SCHEDULE OF FEES
(Payable when Declaration is filed.)

For filing declaration $2.50
In addition to the above—on capital stock:
Minimum charter fee for authorized capital of five thousand dollars and less, $5.00.
On capital stock exceeding five thousand and not over one hundred thousand, $1.00 per thousand dollars.
On capital stock exceeding one hundred thousand dollars and not over one million dollars fifty cents per thousand dollars in addition to one hundred dollars on first hundred thousand dollars.
On capital stock exceeding one million, twenty-five cents per thousand dollars in addition to five hundred and fifty dollars on the first million dollars.

*Fee Paid $*_____

Receipt No. _____

forms used in a state may be secured by application to the secretary of state.

The following quotation from a pamphlet issued by the secretary of state of New York State is worth consideration:

To insure expedition in the filing of papers, they should follow the statute in an orderly manner, each paragraph of the certificate numbered to correspond with the governing paragraph of the law under which it is drawn. Papers so prepared have the right of

way and will be filed first. Those which, upon preliminary inspection, appear to lack conciseness or regularity of form, will be laid aside temporarily for further examination.

Where forms are prescribed or recommended by the secretary of state they should be used in preference to others because employees of the secretary of state's office are familiar with them and naturally give them perference over others.

Forms 14 and 15 are a "Declaration for Charter" and "Charter," respectively, employed in South Carolina.

Form 16 is a statement required of foreign corporations by South Dakota.

Procedure of foreign corporations in California is shown in Form 17 and accompanying explanation issued by the secretary of state of California.

Forms 18 and 19 are required of foreign corporations in Colorado.

Form 20 is the form used by corporations in South Dakota to appoint the secretary of state, or his assistant, as attorney for service of process.

Form 21 is a form of certificate of renewal required in Iowa.

Form 22 is a statement required in Missouri from a corporation desiring to extend its business. Form *22a* is required of Missouri corporations desiring to change their locations.

Forms 13 to 18 are prescribed in New Jersey. Form 23 is an amended certificate of incorporation before payment of capital stock. Form 24 is the form of certificate of incorporation. Form 25 is the form of certificate of incorporation for corporations having both preferred and common stocks with par value. Form 26 is the form of certificate of incorporation for corporations having common stock without nominal or par value. Form 27 is for corporations having common stock and preferred stock without nominal or par value. Form 28 is for corporations having common stock without par value and preferred stock with par value.

Form 16

Statement of Foreign Corporations, South Dakota

STATE OF SOUTH DAKOTA
DEPARTMENT OF STATE

STATEMENT OF FOREIGN CORPORATIONS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2602, REVISED CODE OF 1919 AND ALL ACTS AMENDATORY THERETO.

State of .....
County of ..... } ss

.....being first duly sworn, on oath says that he is the

..... of the .....

a corporation organized under the laws of the state of.....

1st. That the name of such corporation is .....

and the location of its principal office or place of business without the state of South Dakota is.....

....., street....., in the county of.....

state of ....., that its principal office or place of business within the state

of South Dakota is..... street....., county

of.....

2nd. That the names and addresses of the officers of such corporation are as follows:

NAME	OFFICE	ADDRESS

That the NAME and ADDRESS of the AGENT or MANAGER of such corporation in the State of South Dakota is:

Title .....

Name .....

Address .....

3rd. That the amount of capital stock paid in money, property or services, is $.....

4th. That the nature of the business to be transacted in the state of South Dakota is as follows:.....

.....

.....

.....

5th. That the amount of the capital stock represented in the state of South Dakota, by its property located or to be acquired therein and by its business to be transacted therein, is $.....

6th. That the said corporation acting herein by this affiant, duly authorized thereunto, by these presents constitutes and appoints the Secretary of State and the Assistant Secretary of State of the state of South Dakota, and their successors in office, its true and lawful attorneys upon whom all summons, notices, pleadings and processes in any action or proceeding against such corporation, shall be served. And such corporation hereby agrees that such service on the said attorneys shall be of the same legal force and effect and validity as if served on the corporation, and that such appointment shall continue in force and effect as long as any liability of this corporation remains outstanding in the state of South Dakota.

7th. That such corporation was legally authorized to transact business in the state wherein incorporated on the.....day of....., 19....., and is at the date hereof so authorized.

8th. That such corporation has not entered into any combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in the State of South Dakota, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in said State, or fix any standard or figure by which its price to the public shall be in any manner controlled or established.

9th. That such corporation will comply with the laws of the state of South Dakota, relating to foreign corporations.

Dated ..... 19.....

.....

Subscribed and sworn to before me this.....day of....., 19.....

(Notarial Seal) .....

.....
Notary Public.

My commission expires .....

FORM 17

DESIGNATION OF REPRESENTATIVE IN THE STATE OF CALIFORNIA

Designation of Representative in the State of California Upon Whom Process Against_____, Incorporated Under the Laws of_____ May Be Served

Know all men by these presents:

That_____

a corporation organized and existing under the laws of_____

has designated, constituted, and appointed, and by these presents does hereby designate, constitute and appoint_____ whose residence is_____
(Insert number and name of street)

_____ State of California, and
(Insert name of City or Town)

whose place of business is_____
(Insert number and name of street, or room number and name of office building)

_____ State aforesaid, its true and lawful attorney
(Insert name of City or Town)

upon whom process issued by authority of or under any law of said State of California in any action or proceeding against it may be served; and service of such process on said representative shall constitute a valid and binding service on said corporation.

IN WITNESS WHEREOF, Said corporation has caused its corporate name to be hereunto subscribed and its corporate seal to be affixed hereto this_____ day of_____ 192____

_____
(Name of corporation)

By_____
President

By_____
Secretary

[CORPORATE SEAL]

FORM 17 *(Continued)*

STATE OF CALIFORNIA
DEPARTMENT OF STATE, SACRAMENTO

Referring to your inquiry regarding the procedure to be observed in order that a corporation organized under the laws of another state or foreign country may qualify for the transaction of business in this state, we advise that it will be necessary to file in this office—

(1) A certified copy of its articles of incorporation, or charter, and copies of any certificates relating to changes in capital stock, or other amendments, which must be certified by the secretary of state, or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy.

Copies of these documents, *certified by this office,* must be filed in the office of the county clerk of the county where the corporation owns any real property. As many copies as may be necessary to comply with this requirement should be sent for certification.

(2) A designation of a person residing within this state upon whom process may be served, blank form for which is enclosed.

Our fees in this reference will be as follows: $100 for filing copy of articles of incorporation, or charter; $5 for filing designation of agent; 20c per hundred words for recording articles of incorporation, or charter; (Note that we record only the copy of the original articles or charter. Amendments thereto are not required to be recorded); $2.50 for certification of each copy for filing with county clerks.

County clerks are required to collect a fee of $1 for filing each such certified copies. If you care to have us attend to such filing, please advise us in which county or counties you desire the copy or copies to be filed, and send a *separate check* for each county clerk.

All corporations doing business in this state—other than public service, banking and insurance corporations—must pay an annual tax which is levied by the State Board of Equalization, based on reports which are required to be filed with that office. This tax is levied at the rate of 1.8 per centum of the actual cash value of the franchise to do business in this state. The value of the franchise is estimated principally from the report of the amount of business transacted in this state. These reports must be filed within ten days after the first Monday in March of each year, blank forms for which are supplied by the Board. It is impossible to estimate in advance the amount of tax which any corporation will be required to pay.

FORM 18

FOREIGN CORPORATION—CERTIFICATE OF BUSINESS AND AGENT (COLORADO)

Know All Men by These Presents: That we..... President and.....Secretary, of..... a Corporation duly organized under and by virtue of the Laws of the State of.....do hereby certify that the principal place where the business of said Corporation is to be carried on in the State of Colorado, is the City of....., County of....., and we hereby designate, constitute and appoint.....residing in the city of .....County of..... and State aforesaid, the duly authorized agent of said Corporation, upon whom process may be served, pursuant to the Statute in such case made and provided.

Given under our hands and the seal of the said Corporation, at their office in.....and State of..... on this.....day of....., A. D. 19.....

(Corporate Seal)

.....
President.

.....
Secretary.

State of.....
County of..... } ss.

I, ... a Notary Public within and for the County and State aforesaid, do hereby certify that..... .....President and ..... Secretary of.....who are personally known to me to be the persons who subscribed the above and foregoing instrument in writing, appeared before me this day in person and acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this.....day of ....., A. D. 19.....

My commission expires....., A. D. 19....

(Notary Seal)

.....
Notary Public.

Form 19
Affidavit in Re Proportion of Capital Stock Employed in Colorado

AFFIDAVIT

In Re Proportion of Capital Stock Employed in Colorado

STATE OF _____ }
} ss.
COUNTY OF _____ }

_____, President, and

_____, Secretary, of the

_____

a corporation duly organized and existing under and by virtue of the laws of _____

_____ being

first duly sworn upon their oaths, say that the entire amount of the authorized capital stock of the said

_____

_____

is _____ Dollars ($_____),

and that the proportion of the entire capital stock represented by the corporate property, capital and assets employed and located in the State of Colorado is

_____ Dollars ($_____),

(CORPORATE SEAL)

_____
President or Person Authorized to Act as President

_____
Secretary or Person Authorized to Act as Secretary

Subscribed and sworn to before me this _____ day

of _____ 192____

My commission expires _____

(NOTARY SEAL)

_____
Notary Public or Other Officer

FORM 20
APPOINTMENT OF THE SECRETARY OF STATE AS ATTORNEY FOR SERVICE OF PROCESS

STATE OF SOUTH DAKOTA

DEPARTMENT OF STATE

APPOINTMENT OF THE SECRETARY OF STATE, OR HIS ASSISTANT, AS ATTORNEY FOR THE SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING AGAINST THE

_____

COMPANY.

In accordance with the provisions of subdivision "f" of Section 3, of Chapter 172, Session Laws of the State of South Dakota for 1917, and laws amendatory thereto, the

_____ Company

by _____ its President, and _____ its Secretary, by these presents constitutes and appoints the SECRETARY OF STATE and the ASSISTANT SECRETARY OF STATE of the State of South Dakota, and their successors in office, its true and lawful attorneys upon whom all summons, notices, pleadings and processes, in any action or proceeding against such corporation, shall be served. And such corporation hereby agrees that such service on the said attorneys shall be of the same legal force and effect and validity as if served on the corporation, and that such appointment shall continue in force and effect as long as any liability of this corporation remains outstanding in the STATE OF SOUTH DAKOTA.

_____

By _____ President

(Corporate Seal) _____

By _____ Secretary

_____

State of _____ }
County of _____ } ss.

On this _____ day of _____, 192__, before me, _____ a Notary Public in and for said state and county, personally appeared _____ and _____ known to me to be the President and Secretary of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____

(Notarial Seal) Notary Public.

FORM 21

CERTIFICATE OF RENEWAL
IOWA

BE IT REMEMBERED, That at a special meeting of the stockholders of the.....Company, a corporation duly organized and existing under the laws of the State of Iowa, having its place of business at..... .....County, Iowa, held on the.....day of....., 19...., after due and proper notice had been given the stockholders thereof, and at which meeting the requisite number of shares of stock of said corporation was represented, in accordance with its articles of incorporation and the laws of the State, the following resolution was adopted by a .....vote in favor thereof, as follows:

Total No. Shares Outstanding.....
Total No. Voting in Affirmative.....

RESOLVED, That the corporate period of the..... Company, which will expire on the.....day of....., 19...., is hereby extended for a period of..... years from said date, continuing until..... unless sooner dissolved by the voluntary action of the stockholders.

BE IT FURTHER RESOLVED, That the renewal, amended and substituted articles of incorporation submitted to the stockholders at said meeting and hereto attached be and the same are hereby adopted as the articles of incorporation of said corporation under the renewal provided for.

RESOLVED FURTHER, That the president and cashier of this company be and they are hereby authorized and directed to sign, acknowledge, record, publish and do any and all things which are by law required, to execute, complete and carry into effect the above resolution, and to execute, sign and acknowledge the renewal, amended and substituted articles of incorporation duly adopted at said meeting.

We, ... and....., president and cashier of said company, do hereby certify the above to be a true and correct statement of the proceedings of the stockholders at the above named meeting.

Attested by:

....
..... Chairman
....
..... Secretary
.....

STATE OF IOWA }
.....County, } ss.

Subscribed and sworn to before me by the said..... and....., this.....day of....., A. D. 19.....

.....
Notary Public in and for
.....County, Iowa

FORM 22

STATEMENT EXTENDING BUSINESS PURPOSES
(MISSOURI)

Be it known that on the.....day of....., 19...., a meeting of the stockholders of the..... was held at the city of....., county of....., state of Missouri, for the purpose of amending the articles of association of said company, and extending its business purposes, pursuant to notice signed by a majority of the directors of said company, duly published in the....., a..... newspaper published in the city of....., for more than sixty days prior to said date, the first insertion of said notice being on the.....day of....., 19...., and the last insertion on the.....day of....., 19.....

That a copy of said notice, postage prepaid, was deposited in the postoffice in the city of....., Missouri, addressed to each stockholder, at his usual place of residence, at least sixty days previous to the day fixed for said meeting.

That said meeting was organized by choosing....., a director in said company, chairman, and....., secretary thereof.

That at said meeting there were present, in person or by proxy, stockholders holding the larger amount in value of all the shares of stock of said company.

A proposition was then and there submitted to amend section seven of the articles of association of said company and extend its business to include the following purposes: (set out fully the language of the amendment).

And upon canvassing the vote thereon it appeared that a majority of the stock of said company had been voted in favor of such amendment.

....., Chairman.

Attest:

....., Secretary.

....., chairman, being duly sworn, says the matters and things set forth in the foregoing statement are true.

....., Chairman.

Subscribed and sworn to before me this.....day of ....., 19..... My commission expires....., 19.....

(Seal) ....., Notary Public.

State of Missouri, } ss.
County of.....}

On this.....day of....., 19...., before me personally appeared....., to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal the day and date last aforesaid. My commission expires....., 19.....

(Seal) ....., Notary Public.

Note—This statement must be sworn to by the chairman, and also acknowledged by the chairman before a proper officer, and then recorded in the office of the recorder of deeds, and a certified copy from the recorder filed in the department of state.

FORM 22*a*

AFFIDAVIT CHANGING LOCATION OF DOMESTIC CORPORATION (MISSOURI)

State of Missouri, } ss.
County of.....}

....., president, and..... secretary, of the....., a corporation duly incorporated under the laws of the state of Missouri, located at ....., Missouri, being duly sworn, upon their oaths state that at a meeting of the stockholders of said corporation, duly called and held at the office of said company at ....., Missouri, on the.....day of....., the articles of association were, by unanimous consent of the stockholders, amended by changing the location of said corporation from the....., ...county, Missouri, to....., ...county, Missouri.

.....President.

.....Secretary.

State of Missouri, }
County of..... } ss.

On this, the.....day of....., before me personally appeared....., to me known to be the persons who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed, and, upon being duly sworn, say that the matters and facts stated therein are true.

(Seal) ....., Notary Public.

FORM 23

AMENDED CERTIFICATE OF INCORPORATION BEFORE PAYMENT OF CAPITAL STOCK

This Is to Certify, That we

do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First: The name of the corporation is

Second: The location of the principal office in this State is at No. Street, in the of County of

Third: The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory or colony of the United States and in any foreign country or place.

Fourth: The authorized capital stock of this corporation is dollars, divided into shares of a par value of dollars each.

Fifth: The names and post-office address of the incorporators and the number of shares subscribed for by each, the aggregate of which ($) is the amount of capital stock with which this company will commence business, are as follows:

Name.	Post-Office Address.	Number of Shares.

Sixth: The period of existence of this corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of A. D. One thousand nine hundred and

Signed, sealed and delivered in the presence of

State of New Jersey } ss.
County of }

Be it Remembered, That on this day of , A. D. One thousand nine hundred and , personally appeared who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

The Undersigned, being all the incorporators of the..... Company, a corporation organized under and in pursuance of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," the certificate of incorporation of which was duly recorded in the office of the Clerk of the County of....., New Jersey, on the.....day of.....19..., and duly filed in the office of the Secretary of State of New Jersey, on the..... day of.....19.., no part of the capital stock of said corporation having been paid in, pursuant to the provisions of Section 1 of an act of the legislature of the State of New Jersey, entitled "A supplement to an act, entitled 'An Act Concerning Corporations (Revision of 1896),' approved April twenty-first, one thousand eight hundred and ninety-six," approved April 19, 1898, amend said certificate of incorporation so that the same shall read as hereinbefore set forth, and accordingly do hereunto set our hands and seals.

Dated.....192...

State of } ss.
County of }

On this.....day of.....A. D. 19....,

before the undersigned personally appeared.....
who being by me severally duly sworn, did severally depose and say they are all of the incorporators of the.....
Company as set forth in the foregoing certificate, and that no part of the capital stock of said.....Company has been paid in.

Subscribed and sworn to before me
at the .....of
the day and year aforesaid.

(The amended certificate should be first recorded in the office of the clerk of the county where the original certificate of incorporation was recorded, and then filed in the office of the secretary of state. If the principal office is changed to another county, record also in the county where the new principal office is located.)

(See Section 26½.)

FORM 24

CERTIFICATE OF INCORPORATION

STATE OF NEW JERSEY

This Is to Certify, That we
do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First: The name of the corporation is

Second: The location of the principal office is Street in the of County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

Third: The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory or Colony of the United States and in any foreign country or place.

Fourth: The total authorized capital stock of this corporation is dollars, divided into shares of a par value of dollars each.

Fifth: The names and post-office address of the incorporators and the number of shares subscribed for by each, the aggregate of which ($) is the amount of capital stock with which this company will commence business, are as follows:

Name.	Post-Office Address.	Number of Shares.

Sixth: The period of existence of this corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of , A. D. nineteen hundred

Signed, sealed and delivered in the presence of

State of }
County of } ss.

Be It Remembered, That on this day of , A. D. nineteen hundred before me, a , personally appeared

who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Form 25

Certificate of Incorporation for Use by Corporations Having Both Preferred and Common Stocks with Par Value

Certificate of Incorporation

of the .....

This Is to Certify, That we do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revi-

sion of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First: The name of the corporation is

Second: The location of the principal office is at Street, in the of County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

Third: The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory or Colony of the United States and in any foreign country or place.

Fourth: The total authorized capital stock of this corporation is Dollars, divided into shares of preferred stock, of a par value of Dollars each and shares of common stock of the par value of dollars each.

(Here insert preferences, voting powers, etc., of preferred stock. See Sec. 18.)

Fifth: The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which ($) is the amount of capital stock with which this company will commence business, are as follows:

Name	Post-Office Address	Number of Shares

Sixth: The period of existence of this corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of A. D., One thousand nine hundred and

Signed, sealed and delivered in the presence of

State of }
County of } ss.

Be It Remembered, That on this day of , A. D. One thousand nine hundred and before me, a personally appeared

who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

FORM 26

CERTIFICATE OF INCORPORATION
COMMON STOCK (WITHOUT NOMINAL OR PAR VALUE)

CERTIFICATE OF INCORPORATION

OF THE .....

This Is to Certify, That we do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First: The name of the corporation is

Second: The location of the principal office is at Street, in the of County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

Third: The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory or Colony of the United States, and in any foreign country or place.

Fourth: The total authorized capital stock of this corporation is shares of Common Stock, without nominal or par value.

All or any part of said shares of Common Stock, without nominal or par value, may be issued by the corporation from time to

time and for such consideration as may be determined upon and fixed by the Board of Directors, as provided by law.

Fifth: The names and post-office address of the incorporators and the number of shares subscribed for by each, the aggregate of which (shares) is the amount of capital stock with which this company will commence business, are as follows:

Name	Post-Office Address	Number of Shares

Sixth: The period of existence of this corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of A. D. One thousand nine hundred and

Signed, sealed and delivered in the presence of

State of }
County of } ss.

Be It Remembered, That on this day of A. D., One thousand nine hundred and before me, a personally appeared

who I am satisfied are the persons named in and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

FORM 27

CERTIFICATE OF INCORPORATION
COMMON STOCK AND PREFERRED STOCK
(WITHOUT NOMINAL OR PAR VALUE)

CERTIFICATE OF INCORPORATION

OF THE .....

This Is to Certify, That we do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First: The name of the corporation is

Second: The location of the principal office is at Street, in the of County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

Third: The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory or Colony of the United States and in any foreign country or place.

Fourth: The total authorized capital stock of this corporation is shares, without nominal par value, and the corporation shall be, and is, authorized to issue shares of Preferred Capital Stock and shares of Common Capital Stock, all of which shall be issued without nominal par value.

All or any part of the shares of Common and Preferred Stock may be issued by the corporation from time to time and for such consideration as may be determined upon and fixed by the Board of Directors, as provided by law.

(Here insert preferences, voting powers, etc., of preferred stock. See Sec. 18.)

Fifth: The names and post-office address of the incorporators and the number of shares subscribed for by each, the aggregate of which (shares) is the amount of capital stock with which this company will commence business, are as follows:

Name	Post-Office Address	Number of Shares

Sixth: The period of existence of this corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of A. D. One thousand nine hundred and

Signed, sealed and delivered in the presence of

State of }
County of } ss.

Be It Remembered, that on this day of A. D. One thousand nine hundred and before me, a personally appeared

who I am satisfied are the persons named in and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

FORM 28

CERTIFICATE OF INCORPORATION
COMMON STOCK (WITHOUT NOMINAL OR PAR VALUE)
PREFERRED STOCK (WITH PAR VALUE)

CERTIFICATE OF INCORPORATION

OF THE .....

This is to Certify, That we do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

First: The name of the corporation is

Second: The location of the principal office is at

Street, in the of County of

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is

Third: The objects for which this corporation is formed are

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in any State, Territory or Colony of the United States, and in any foreign country or place.

Fourth: The total authorized capital stock of this corporation is shares of Preferred Stock of the par value of each, and shares of Common Stock, without nominal or par value.

All or any part of the shares of Common Stock, without nominal or par value, may be issued by the corporation from time to time and for such consideration as may be determined upon and fixed by the Board of Directors, as provided by law.

(Here insert preferences, voting powers, etc., of preferred stock. See Sec. 18.)

Fifth: The names and post-office address of the incorporators and the number of shares subscribed for by each, the aggregate of which ($) is the amount of capital stock with which this company will commence business, are as follows:

Name	Post-Office Address	Number of Shares

Sixth: The period of existence of this corporation is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the day of A. D. One thousand nine hundred and

Signed, sealed and delivered in the presence of

State of }
County of } ss.

Be It Remembered, That on this day of A. D., One thousand nine hundred and before me, a personally appeared

who I am satisfied are the persons named in and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

V

THE CORPORATE NAME

1. Purposes and Limitations

The purpose of a corporate name is to afford a convenient means of reference to the enterprise in question. As distinguished from natural persons corporations may and frequently do choose names which are indicative of the character of the business in which they are engaged, as, United States Steel Corporation, General Motors Corporation, etc. In choosing a name a corporation is subject to certain restrictions. The names of concerns already engaged in business possess a good-will value which cannot be infringed. In this regard the provisions of the state laws should be observed. Also the precedents set in the various court decisions on the subject should not be ignored. If one company discovers that another company is planning to commence operations under a name so nearly like its own that injury will result to it an injunction will lie to prevent it.

2. Special Requirements in Various States

In various states certain rules have been laid down relative to the construction of the corporate name.

In Massachusetts the name must, in the judgment of the commissioner, indicate that the enterprise in question is a corporation.

In New York a private corporation must adopt a name which indicates that it is a corporation, as distinguished from a natural person, firm or partnership. This it may do by use of a prefix, affix, abbreviation, or some appropriate word or words.

It is the duty of the secretary of state or other designated official to reject proposed names of incorporating concerns which bear too close resemblance to others already in use in the state, providing the state laws contain such a prohibition. Even if such statutory prohibition does not exist state officials may reject names which conflict with others already in use. *People* v. *Rose,* 225 Ill. 496.

State officials do not reject a name because some foreign concern has already preempted it. That is a matter to be settled between the two concerns. Usually the older concern may enjoin the younger one from the use of such name.

In Illinois, if it appears that the purpose is to mislead the public, no charter will be issued although the prior use of the name was by a partnership or joint stock company. *People* v. *Rose,* 219 Ill. 46.

3. Choice of Name

Concerns are permitted wide latitude in the selection of a name, but the matter is one deserving more consideration than it sometimes receives. Names awkward or difficult of pronunciation should be avoided, so likewise should those that are long or hackneyed.

4. Protection of Corporate Name

The granting of the charter gives to the corporation receiving it the exclusive right to the use of the name indicated therein. Since a name frequently possesses a large good-will value its permanent retention is a matter of importance. Although corporate names have been looked upon as trade-marks, the tendency is to base protection of them on the broader principle of unfair competition. By this is meant that if a name has, in the mind of the buying public, become associated with the goods of the concern using such name, such concern is entitled to the benefits of such good-will. *Borden Ice Cream Co.* v. *Borden's Condensed Milk Co.,* 201 Fed. 510, 513.

If a license has been granted and it is afterwards found that the name is the same or similar to that of an existing company, the company thus injured may proceed by injunction as in cases of unfair competition. Hale, *Private Corporations* (Ill.) sec. 16. A corporation may protect its name in Illinois even though it suffers no pecuniary loss. *Cemetery Assn.* v. *Cemetery Assn.*, 246 Ill. 416.

When, in such cases, an injunction is issued against the offending company restraining it from using the forbidden name, it must change its name, reincorporate, or go out of business.

In some states it is provided by statute that a corporation cannot adopt a name the same or substantially the same as that being used by another company. Regardless of such provision, however, a corporation is protected at common law in the exclusive use of its name. A court of equity will issue an injunction to restrain the offending company from the use of such name.

5. Change of Corporate Name

Statutory requirements must be closely followed in changing a corporation's name. Usually an amendment to the charter is necessary. The obligations of the company remain unchanged, as well as does its title to property. Unless the statutory provisions are followed the stockholders may find themselves liable as partners for the debts of the old concern. An alternative solution may be for the courts to hold that the old corporation continues in existence, but is bound by all contracts made under the new name.

6. Instructions for Changing Location

Change of location must be by unanimous consent of all the stockholders. The affidavit must be recorded in the county where the corporation is located and also in the county where it proposes to locate, and a certified copy thereof filed in the office of the secretary of state, together

with fee of $1.90. Such certified copy should be procured from the recorder of the county where the affidavit was last recorded, thus showing the recording in both counties.

The certificate of incorporation, articles of association and all amendments thereto, should be re-recorded in the county of the new location, and certified copies from the recorder of that county, showing such re-recordation, should be sent to the secretary of state.

VI

THE CORPORATION CHARTER

1. Charter Defined

Morawetz, *Private Corporations,* Sec. 316, defines a charter as follows: "The Charter of a Corporation serves a twofold purpose; it operates as a law conferring upon the corporators the right or franchise of acting in a corporate capacity and, furthermore, it contains the terms of the fundamental agreement between the corporators themselves."

When the charter or grant is accepted it becomes a contract between the corporation and the state which cannot be impaired by subsequent legislation without the consent of the corporation, unless reservation to that effect has been made in the act by which the charter is granted.

2. Power to Create Corporations

Although individuals may establish partnerships without asking consent of the state this is not true of corporations. Corporations can be created only by the state, and in this country this authority to establish corporations takes the form of a legislative grant. We have no common law corporations. The power of state legislatures to create corporations is absolute, except as restricted by the federal and state constitutions.

All state constitutions abridge in some respect the powers of the legislature to create corporations. Thus in most states the legislature is prohibited from creating corporations by special act, with certain exceptions. Although corporations are created theoretically by act of legislature, the actual procedure is for the legislature to pass a general corporation

act authorizing persons to establish a corporation by complying with certain formalities. The state officials who supervise the formation of corporations are given no discretionary powers and in no sense do they themselves create corporations.

General incorporation laws define the purposes for which corporations may be established and explain the steps to be taken to form them. One general requirement is that articles of association be executed by the incorporators and filed in certain offices or courts. The minimum number of incorporators is usually prescribed. Among the things required to be set forth in the articles of incorporation are:

1. Names and addresses of the incorporators
2. Name of the proposed corporation
3. Its principal place of business
4. Purposes for which the corporation is established
5. Duration of the corporation
6. Number of the directors, together with the names and addresses of those who will act as such until a formal election is held.
7. If a stock corporation, the amount of the capital stock, the number of shares, and the amount to be paid in on such stock before beginning operations.

The laws of the state in question should be consulted for variations from these requirements, as well as for all details relative thereto. Thus in some states a description of the corporate seal is required. Some state laws require provisions relative to the amount of debts which may be incurred.

3. Incorporation Under General Laws

The various states now have passed general incorporation acts the provisions of which are similar in many respects. These acts outline the procedure necessary to organize and form a corporation.

Such statutes generally provide that a certain number of persons may associate themselves as a corporation for any one of the many business purposes stated in the statutes; that they shall sign and acknowledge an instrument in writing usually called articles

of association or certificate of incorporation; that such articles or certificate shall state the name of the corporation and the object or purpose for which it is organized; the principal place of its contemplated business; the amount of its capital stock, and the number of shares into which it is divided; the period of duration of the corporate existence; a description of the seal of the proposed corporation; and the names and residences of the directors who are charged with the management of the corporate business for the first year. In the execution of the instrument the incorporators are usually required to give the state, county and city of their residence. Copies of such articles or certificates are usually required to be filed in one or more public offices; one copy, usually, in the office of the secretary of state, and another in some one of the public offices of the county in which the proposed corporation shall have its principal office or shall carry on its business. Usually on the filing of such articles a certificate of incorporation is issued by a designated officer, reciting the fact that the provisions of the law have been complied with and that the corporation named is duly authorized to transact business in its corporate capacity.

Strictly speaking, there is no such thing as a charter under general incorporating laws, the articles of association and the statutes taken together really constituting the charter. *Bixler* v. *Summerfield,* 195 Ill. 147.

4. Constitutional Restrictions

As noted above, it is required by constitution in most states that corporations cannot be created by special act, but only under general laws, certain exceptions usually being allowed. In some states this is not held as prohibiting the passage of special acts conferring additional privileges or powers upon previously created corporations, or amending charters already granted. This power cannot, however, be used as a subterfuge to so amend a charter as in reality to create a new corporation.

A prohibition from creating corporations by special act undoubtedly does not, in terms, prohibit the legislature from passing a special law altering the charter of an existing corporation; but it is plain that a constitutional provision cannot be avoided, and practically annulled, by a subterfuge. A special law altering the charter of an existing corporation, and practically changing it,

must therefore be deemed in violation of a constitutional prohibition against the creation of corporations by special act. If this were not so, organizations formed under the general laws might be treated merely as the rough material out of which corporations might afterwards be fashioned at pleasure under special acts of the legislature, and the constitutional provision would become an empty form. Morawetz, *Private Corp.*, sec. 12.

Some cases, however, maintain that the constitutional prohibition against incorporation by special acts is also a prohibition against special acts granting additional powers. *Atty. General* v. *Chicago & N. W. R. Co.*, 35 Wis. 560.

5. Grant of Powers to Corporations

Limited by the general restrictions of constitutional provisions, the legislature may delegate such powers to corporations as it sees fit. Its will in this regard usually takes the form of a general corporation law, and if there is nothing therein permitting the organization of a corporation for a certain purpose, it can be organized only by special act of legislature.

The powers granted to a corporation are set forth in the certificate of incorporation, which consequently may be regarded as evidence of the state's delegation of authority. It follows that the charter must be explicit in all details, so that the meaning of its various provisions may not be misinterpreted. In fact, clarity of statement in the charter is required by law in some states.

6. Purposes of Incorporation

It is customary for legislatures, in framing general corporation laws, to limit, in some respect, the powers which may be granted to corporations. Formerly corporations were permitted to exist for but a single purpose, but with a growing liberalization in the attitude of the public generally towards corporations the various states, with one exception, have liberalized their laws so that corporations may be organized for more than a single purpose. The exception is

Indiana. The statutes of that state declare: "no corporation shall engage in the conducting of more than one line of business and its allied and interdependent lines of business." *Burns Ann. Stat.*, 1926, sec. 4829.

The construction of the statute may of course be questioned. Some statutory provisions are quite clear, but just what others mean is sometimes doubtful. Sometimes it is desired to organize a corporation whose purposes cannot be found enumerated in the statute, in which event authority therefor has been sought in the general clause common to the statutes of most states. Thus, where the Wisconsin law, after enumerating specific purposes, added, "or for any lawful business or purpose whatever," the court held that "by a well settled rule of construction, these general words extend only to things of a kindred nature to those specially authorized by the section." Hence the law could not be interpreted as granting unlimited authority for forming a corporation for any purpose whatever. *State* v. *Inter. Inv. Co.*, 88 Wis. 512.

In Missouri, however, a general purpose clause authorizing the formation of corporations "for any other purpose intended for pecuniary profit or gain not otherwise specially provided for, and not inconsistent with the constitution and laws of this state" was held not to be limited to the kind of corporations specified in preceding clauses. *State* v. *Corkins*, 123, Mo. 56.

Perhaps a limitation of powers granted to a corporation has at least one advantage from the point of view of stockholders in that they are thus prohibited from venturing into too many kinds of enterprises at the same time.

Nevertheless the tendency is towards charters with broad and numerous powers specified therein. It is a question, sometimes, whether this result may be secured best by enumerating a large number of specific powers or by incorporating in the charter a fewer number of clauses of the general purpose type. Probably the latter plan is preferable in case of many small and medium sized concerns.

7. Unauthorized and Unlawful Purposes

If a corporation undertakes to do what is not permitted by its charter, even though otherwise legal, its acts are regarded as ultra vires, i. e., beyond its powers.

If part of its acts are authorized and part unauthorized or illegal, the corporation will be protected as to the contracts it enters into as regards the legal acts.

The incorporation laws of most states contain provision to the effect that corporations cannot be organized for unlawful or immoral purposes. Regardless of such provisions, however, a corporation would not be permitted to engage in either unlawful or immoral activities, on the grounds of public policy.

Even though through oversight or otherwise, the charter granted specifies that the corporation may engage in unlawful acts, such provision would be held void.

Where illegal acts are performed by a corporation it is the custom of courts to disregard the corporate existence altogether and to deal with the natural persons involved as if such corporation did not exist. *First Natl. Bk. of Chicago* v. *Trebein Co.*, 59 Ohio St. 316.

8. Statutory Requirements

Statutory requirements relative to the creation of corporations are mandatory, hence must be complied with to form a de jure corporation. "Where the attempt at incorporation is under a general law, and there is a non compliance with the law in a material respect, there is, we think, such want of incorporation that exemption from individual liability is not secured." *Kaiser* v. *Laurence Sav. Bk.*, 56 Iowa 104. The reason for making the statutory requirements a condition precedent to the existence of the corporation is that they constitute the basis on which all subsequent proceedings rest. Among the statutory requirements that have been held as conditions precedent to the valid creation of corporations are:

1. That the articles be signed by the incorporators.
2. That the articles be filed in the designated offices.
3. That the incorporation be by the required number of incorporators.
4. That the articles name the directors who shall manage the business for the first year.
5. That a description of the corporate seal appear in the articles of association.

Not all statutory requirements are regarded as conditions precedent. A distinction is made between acts necessary to the process of incorporation and those not prerequisite to the assumption of corporate powers. In one case the filing of a copy of the articles of incorporation in the office of the clerk of the county in which the business of the corporation was to be conducted was held to be a condition precedent, whereas the requirement that a duplicate copy thereof be filed in the office of the secretary of state was held not to be a condition precedent. *Spring Valley Water Works* v. *San Francisco,* 22 Cal. 434.

Many statutory requirements are conditions subsequent, that is, compliance with them is not essential to corporate existence, although they cannot be disregarded. Failure to comply with conditions subsequent may justify the state in taking proceedings to deprive the corporation of its charter, or there may exist express legislation to the effect that a corporation shall forfeit its charter if it fails to comply with certain stated conditions subsequent.

Yet other statutory requirements are merely directory, in which event failure to comply therewith constitutes simply an irregularity which cannot render the charter void or voidable.

As to what constitutes compliance with conditions precedent, the rule is that the compliance must be substantial. Strict compliance is not necessary. The statutes themselves may indicate that only substantial compliance is expected. Thus where it was required that one-half the capital stock be paid in lawful money, it was held that there was substantial compliance where the corporation had property

the market value of which was in excess of the par value of the stock. *State* v. *Wood,* 13 Mo. App. 139.

From what has been said it does not follow that a failure to comply with all conditions precedent will result in the destruction of the corporation. The corporation may continue to exist as a de facto corporation, in the absence of a direct attack by the state. "Any failure or omission by a corporation to comply with the provisions of a statute, which falls short of justifying a direct proceeding by the state to forfeit its charter, is not fundamental; and third parties may, by their acts, be estopped from setting up such failure as a bar to the enforcement of their obligations to the corporation." *Jackson* v. *Crown Point Min. Co.,* 21 Utah 1.

The state may, by legislative act, cure the defect in the attempted incorporation, provided that in doing so the act does not amount to special legislation, where such special legislation is prohibited. Such act operates to cure the defects in the steps taken to incorporate and renders the company a de jure corporation.

9. Special Charter Provisions

The tendency to enlarge the powers of corporations has given rise to much consideration of special charter provisions drawn up with a view to fulfilling the law and at the same time securing for the corporation the privileges which it desires. The first state to see the desirability of extending broader powers to corporations was New Jersey. This it did by permitting a corporation to include in its charter a variety of purposes and in other ways extending to it a freedom of choice and action not hitherto known.

The New Jersey law states that:

> The certificate of incorporation may also contain any provision which the incorporators may choose to insert, for the regulation of the business and for the conduct of the affairs of the corporation, any provision creating, defining, limiting, and regulating the powers of the corporation, the directors and the stockholders, or

any class or classes of stockholders; provided such provision be not inconsistent with this act.—*Comp. Stat.*, p. 1603, sec. 8.

Since the passage of this law other states have enacted similar provisions.

However, some states prohibit special charter provisions altogether, while others, although permitting them, restrict them in one way or another, or prohibit certain classes of special provisions.

The Illinois corporation law, after specifying the things that must be set forth in the statement of incorporation, says:

(13) Any other provisions, not inconsistent with law, for the regulation of the business and the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders or any class or classes of stockholders.—Smith-Hurd, *Ill. Rev. Stat.*, Ch. 32, sec. 4.

All such clauses permitting the incorporation of special provisions in the charter must be considered with reference to the law in general, as no provisions would be effective which were in direct contravention of other clauses.

The Minnesota corporation law states that the charter "may also contain any other lawful provision defining and regulating the powers or business of the corporation, its officers, directors, members and stockholders."

10. Special Charter Provisions Illustrated

Special charter provisions may be classified as (*a*) special purpose, (*b*) general purpose, and (*c*) regulating.

(a) Special Purpose Clauses

FORM 29
ADVERTISING

To engage in the general business of advertising, acting both as principals and as agents; to prepare and arrange advertisements and to engage in the manufacture and sale of advertising

novelties and devices; to construct, purchase, lease and deal in sign-boards, bill-boards and all other structures suitable for advertising purposes; to print, publish, paint, buy and sell all forms of advertising and decorating materials; to make and carry out all forms of contracts with corporations, firms and individuals such as are necessary for the accomplishment of the purposes of the company.

Form 30
Aeroplanes

To engage in the general business of aeroplane manufacture; to buy, sell, assemble, lease, store, repair, operate and deal in aeroplanes of all kinds; to engage in the manufacture, purchase and sale of aeroplane parts and supplies; to enter into any contracts that may be necessary for the prosecution of the aeroplane business.

Form 31
Aluminum

To engage in the manufacture, purchase and sale of aluminum and any and all other metals and chemicals; to engage in all kinds of business in connection with the manufacture, purchase and sale of aluminum and other metals and chemicals and to make all necessary contracts for the prosecution of such business, including the licensing to others of all rights and privileges now owned by the company for the manufacture, use and sale of all metals and chemicals; to buy, own and sell patents useful in connection with the manufacture of all metals and chemicals.

Form 32
Amusements

To conduct all kinds of amusement enterprises including theatres, parks, dance halls, bathing beaches and summer gardens; to operate all kinds of transportation facilities to and from the same and for other purposes; to produce all kinds of dramatic performances including operas, recitals, and musical entertainments of all kinds; to manufacture, purchase, lease, sell and otherwise deal in all kinds of real estate, lands and buildings to be used in connection with or the establishment of theatres, offices, warehouses, heating plants and all other buildings and machinery of whatever description; to originate, own, purchase, control and deal in all kinds of patents and inventions valuable in connection

with the amusement business; to borrow and loan money and to act as agent, broker, trustee or in any other fiduciary capacity and to do all such acts and perform all such things not inconsistent with the laws of the state as may be necessary to the operation of the business of the company.

Form 33
Athletic Club

To establish an athletic ground in the town of , county of , and to construct thereon all buildings necessary to the purposes of the company such as pavilions, gymnasiums and refreshment rooms; to promote, hold and arrange for all kinds of athletic games, including baseball, football and all other kinds of matches and competitions; to offer prizes and awards to promote such competitions; to buy and sell all kinds of property and apparatus commonly employed by those who frequent athletic clubs; to buy and sell all kinds of real estate essential to the promotion of the objects of this club and to engage in all kinds of enterprises and to make all kinds of contracts useful in the promotion of the interests of the club.

Form 34
Audit Company

To examine, analyze, audit and report upon the financial and physical condition of any enterprise; to keep the accounts of corporations, partnerships and individuals; to install accounting systems; to engage in the work of systematization and management of businesses; to make appraisals of real estate and other properties and to engage in all other kinds of business such as is customarily done by audit companies.

Form 35
Automobiles

To manufacture, buy, sell, lease, store and repair automobiles and motor vehicles of all kinds; to manufacture, buy and sell automobile parts of all kinds, including automobile bodies and tops; to manufacture and deal in all kinds of boats propelled by motor or marine engines and to manufacture, buy and sell all kinds of hardware and electrical appliances as well as all kinds of wooden ware necessary to the manufacture or repair of automobiles or motor boats.

Form 36
Bakery

To manufacture and sell all kinds of bread, biscuits, pies, cakes, crackers and confections and articles of all kinds, including the ingredients, preserves and conserves useful in connection with the manufacture and sale of such articles; to buy, lease or otherwise acquire lands, buildings, factories and equipment necessary for the manufacture, preservation and handling of the products of the company; to purchase, lease or otherwise acquire trade-marks, trade names, inventions, improvements and formulæ of all kinds useful in the promotion of the company's business.

Form 37
Boilers

To manufacture, buy and sell boilers, condensers, evaporators, heaters and dryers of all kinds and to manufacture and deal in parts applicable thereto and to engage in all activities necessary to the promotion of said business.

Form 38
Brick

To manufacture, buy, sell, lease and otherwise deal in fire, building and paving brick, sewer piping, tile and all other kinds of useful articles made wholly or in part from fire clay; to contract for and construct brick pavements and to purchase, own and operate all kinds of transportation facilities useful in connection with said business and to do all other things essential to the promotion of said business.

Form 39
Brokerage

To engage in a general brokerage and commission business, including the forwarding and exporting of all kinds of commodities; to purchase, sell and otherwise deal in all kinds of commodities, customarily dealt in on boards of trade and exchanges; to deal in all kinds of listed and unlisted securities on a commission basis.

Form 40
Building Company

To operate, own, lease, purchase and sell all kinds of saw mills; to manufacture, buy and sell all kinds of building materials in-

cluding lumber and brick; to construct houses, ships, boats and barges of all descriptions; to engage in all operations necessary to the promotion of the aforementioned activities and to purchase, hold and deal in real estate, in so far as may be necessary for the carrying out of the operations of the business.

Form 41
Building Materials

To manufacture, purchase, sell and otherwise deal in all kinds of building materials, including lime, plaster, stone, lumber and roofing of all descriptions; to erect, purchase or lease kilns, warehouses, factories and all other structures essential to the conduct of said business; to acquire, own, lease, maintain and operate quarries, cement and plaster mills, factories and all other establishments necessary in the manufacture or adaptation of all kinds of structural materials and supplies; to own and operate all kinds of machinery and apparatus essential to the operation of the business of the company.

Form 42
Castings

To engage in the manufacture of castings and forgings of all kinds made from iron, steel, or any or all other metals; to deal in all kinds of articles so manufactured; to make all contracts essential to the carrying on of such business; to construct or lease buildings necessary to the carrying on of said business, and to do all other things incidental thereto.

Form 43
Cereals

To manufacture and deal in all products and by-products, mixtures and compounds of all kinds of grains, sugars, vegetables and cereals, whether such products and by-products consist wholly or in part only thereof. To purchase, sell and otherwise deal in all kinds of cereals and vegetables, including corn, rice, wheat, sorghum, sago as well as the products and by-products thereof and mixtures and compounds thereof and all kinds of articles consisting in part or in whole thereof; and to purchase, sell and deal in sugar, starches, glucose, syrups, chemicals, oils and all or any of the products or by-products thereof or any articles composed wholly or in part thereof or any compounds thereof.

Form 44
Chemicals

To engage in the manufacture, purchase, sale, importation and exportation of all kinds of chemicals; to deal in medicinal, industrial, chemical and all other preparations as well as paints, varnishes, oils, pigments, cements, electrical and photographic supplies, hospital supplies and surgical and scientific apparatus and materials of all kinds.

Form 45
Coaches

To own and operate a line or lines of coaches, carriages, taxicabs or automobiles drawn by horses or mules or propelled by motor for the transportation of passengers and packages and freight of all kinds; to purchase or lease all real and personal property essential to the conduct of such business and to do all things necessary to the successful carrying on of said business.

Form 46
Coal Mining

To mine, transport, sell and otherwise traffic in coal; to prepare for market and traffic in coke and all other coal products; to purchase or lease and dispose of all buildings, land, machinery and equipment necessary to the conduct of such business; to purchase, lease and hold in fee simple or upon royalty or rental or otherwise coal lands.

Form 47
Coal and Iron

To mine coal, iron ore and other minerals; to manufacture and deal in iron, steel, and other metals and coke as well as articles composed in whole or in part of iron, steel or other metals; to erect, own, lease, and operate foundries, furnaces or forges, rolling mills and all buildings and equipment necessary for the conduct of such business; to quarry limestone, salt, clay and sand and to prepare them in any way for the market or for the use of the company; to purchase or lease lands, mines and mining rights, timber and timber rights, water and water power and such other real and personal property as may be necessary or desirable for the conduct of the business; to sell or in other ways dispose of such property rights and privileges; to make such improvements on owned or leased lands as may be desirable for the promotion of

the business or for the welfare of the employees of the company; to maintain and operate harbors, pipe lines, steamship lines and all other enterprises necessary to the business carried on.

Form 48
Commission Merchant

To engage in business anywhere as factors or commission merchants in buying, selling or otherwise dealing in at wholesale or retail merchandise of every sort and to engage in any other line of business consistent with the objects of the company; to open places of business anywhere in the United States or elsewhere; to take over the business of any other company and to exercise its powers; to receive and distribute profits derived from stock and securities of the companies owned by this company; to acquire by purchase or otherwise all or part of the business of any person or company engaged in the kind of business which this company is authorized to engage in; to cooperate with other persons or companies on a partnership basis or otherwise for sharing profits in such lines of business as this company is authorized to carry on or which would be beneficial to this company directly or indirectly.

Form 49
Construction

To engage in a general contracting and engineering business; to design, construct, repair, enlarge, remove or otherwise do work upon all kinds of structures including roads, buildings, mines, factories, bridges or water works and all other structures of iron, steel, wood, masonry or earth construction whatsoever; to make all contracts or assignments of contracts essential to the prosecution of such business and to make, purchase, and sell all kinds of building materials and supplies.

Form 50
Contracting and Building

To contract for the construction, improving, altering, decorating, finishing and furnishing of all kinds of structures, including buildings, storerooms, warehouses and edifices of every description; to buy and sell personal and real property of all kinds; to acquire, sell, own, or lease and operate lumber yards, timber lands, saw mills, brick yards, pulp and paper mills, furnaces, factories and any other establishments necessary for the manufacture, preparation and production of building materials of every description.

Form 51
Dairy Products

To buy, sell and generally deal in milk, cream and other dairy products; to manufacture and deal in any or all of the products or by-products of milk and cream; to operate cold storage plants; to manufacture ice; to build, purchase, lease or otherwise acquire packing houses and canning factories for storage and handling of all dairy products; to conduct all such other lines of business, manufacturing or otherwise, as may be necessary or advantageous in connection with a general dairy business; to protect the company's products by the use of such trade-marks or trade names as may be desirable and to acquire such trade marks, formulae and apparatus as may be useful in the conduct of such business.

Form 52
Department Store

To engage in the general business of department store operation; to manufacture, buy and sell all such articles of merchandise as are dealt in by department stores; to advertise by all legitimate means; to carry on the business of publishing, engraving, book binding and designing; to obtain by purchase, lease or otherwise and to register, own, use, sell, assign and grant all trade-marks, formulae, franchises, contrivances, brands, labels and patterns of every description whatsoever which may be obtained under letters patent in this or in any other country.

Form 53
Drugs

To manufacture and compound drugs, chemicals and medicine; to purchase, sell and otherwise deal in all kinds of drugs, chemicals, soaps, toilet articles, mineral and soda waters and all kinds of medicinal, chemical and pharmaceutical preparations and compounds.

Form 54
Dry Goods

To buy, sell, manufacture and otherwise deal in either at wholesale or retail all kinds of dry goods including clothing, textile fabrics, boots, shoes, fancy goods and all articles of like general character and description; to engage in any form of manufacture or mercantile enterprise incidental to the conduct of the dry goods business.

Form 55
Electric Light and Power

To supply light, power, heat and fuel of all kinds by any practicable method or means to all people and places, public and private; to manufacture and sell electricity and electrical machines, appliances and devices of all kinds.

Form 56
Engineering

To conduct and carry on the business of general engineering and contracting for the designing and construction of plants and buildings of all kinds; to engage in the preparation and production of materials to be used in connection therewith; to manufacture, buy and sell machinery, tools and implements of all kinds and to construct and install all types of manufacturing plants.

Form 57
Expressing

To collect, receive, forward, distribute and deliver packages, merchandise and goods of all kinds between cities, towns, villages and other places in all parts of the world; to purchase, sell, manufacture or otherwise acquire, use, operate, repair and lease cars, trucks, wagons, vehicles and other conveyances of every description used in carrying or transporting merchandise and goods of all kinds; to engage in a general commission and banking exchange business and to buy, hold, sell or otherwise dispose of all real and personal property necessary to the conduct of the expressing business.

Form 58
Flour

To engage in the general business of buying and selling grain, feed, hay, straw, fuel and produce of all kinds; to manufacture, buy and sell flour, meal, feed and other products; to establish and operate general stores in connection with the transaction of such businesses and to carry on all of the activities of a general milling business and of the business of retail store operation.

Form 59
Foundries

To engage in a general foundry and machine shop business; to manufacture machinery and iron castings of all kinds; to pur-

chase, sell or otherwise acquire and dispose of iron and steel of all kinds and to buy, lease, operate and sell such real estate as may be necessary or desirable to the conduct of said business.

Form 60
Furniture

To manufacture, purchase, sell, export, import and otherwise deal in all kinds of office, store and household furniture as well as all articles of wood or metal or both; to manufacture, buy, sell and otherwise deal in mats, rugs, carpets and machinery and to sell and manufacture any and all other goods or materials; to own, purchase, sell or otherwise acquire and dispose of patents; to manufacture, sell and otherwise deal in all kinds of patented articles and appliances; to own, purchase, sell and otherwise deal in all kinds of personal and real property essential to the conduct of said business.

Form 61
Garage

To manufacture, purchase, sell, rent, store, repair and otherwise care for all kinds of motor vehicles; to deal in supplies and appurtenances customary to the motor vehicle business; to erect, purchase, lease and operate garages and filling stations for the sale of gasoline, oils, and all other automobile supplies of every description.

Form 62
Grain

To buy, sell, store, ship, export, import and otherwise deal in all kinds of grains and grain products and by-products.

Form 63
Groceries

To purchase, sell and otherwise deal in both at wholesale and retail, groceries of every description as well as all other articles incidental to the grocery business, including, fish, vegetables, poultry, game, wares, produce and provisions of all kinds.

Form 64
Hardware

To manufacture, purchase, sell, and otherwise deal in all kinds of hardware both at wholesale and retail; to buy, sell, hold, lease, and operate all such personal and real property as may be necessary to the prosecution of said hardware business.

Form 65
Heating Apparatus

To manufacture and otherwise deal in all kinds of heating apparatus; to maintain, buy, use, hold, rent or mortgage the same and the various parts thereof; to purchase or otherwise acquire and dispose of patents valuable in the prosecution of said business.

Form 66
Hotel

To engage in the general hotel business; to operate restaurants, refreshment rooms, cafes and all other establishments necessary to the prosecution of the hotel business; to deal in foods of all kinds; to operate laundries, hair-dressing establishments, libraries and places of recreation and amusement of all kinds; to purchase, own and sell all kinds of cigars and tobaccos and to act as the agent for transportation companies and theatres of all kinds.

Form 67
Ice

To conduct a general business in the manufacture, storage and sale of ice; to maintain all kinds of cold storage plants and refrigeration plants; to own and operate all necessary buildings and transportation equipment essential to the prosecution of said business.

Form 68
Insurance Agent

To act as agent for insurance companies of all kinds, including life, fire, casualty, accident, health, plate glass, boiler, elevator, marine and credit insurance and all other forms of insurance whatsoever; to own all property and to engage in all lines of business contributory to the successful prosecution of said insurance business.

Form 69
Iron and Steel

To purchase, sell, own, and generally deal in iron and steel of all kinds as well as all other metals; to acquire, operate, sell or otherwise dispose of all kinds of real and personal property essential to the conduct of said business.

Form 70
Laundry

To carry on the business of a steam and general laundry; to wash, cleanse, scour, repair, bleach, wring, dry, iron, color, dye, disinfect, renovate and otherwise prepare for use all kinds of articles of wearing apparel as well as all textile materials of household use; to buy, sell, own, and operate all kinds of apparatus and equipment contributory to the operation of said laundry business.

Form 71
Lumber

To engage in and carry on the lumber business in all of its varieties; to purchase, own, sell and otherwise deal in timber of all kinds, lands, mills, logs and lumber of all kinds; to engage in the manufacture of all kinds of articles constructed in whole or in part of wood; to construct, lease, own, operate and dispose of pulp mills; grist mills; tan bark mills and mills of all other kinds whatsoever; to operate, own, purchase, sell, lease and otherwise dispose of transportation facilities of all kinds, including railroads, tram roads, steamship and barge lines; to establish booms of all kinds for the purpose of catching and holding logs and other timber; to engage in the general merchandise business and to do all things and own all kinds of property necessary to the conduct of said lumber business.

Form 72
Machinery

To manufacture, purchase or otherwise acquire and deal in machinery of every description whatsoever; to secure by purchase or otherwise patents, privileges, licenses, trade-marks, trade names and secret processes of all kinds necessary to the prosecution of said business; to engage in the general merchandise business, both wholesale and retail; to do all things necessary to the prosecution of said business.

Form 73
Meat

To purchase, sell, manufacture, cure, store, transport and otherwise deal in all kinds of meat and fish; to buy, sell and otherwise deal in all kinds of dairy products, live stock, poultry and all kinds of food products.

Form 74
Mining

To buy, sell, own and operate mines, quarries and mineral lands of every description; to develop, operate and promote the same; to bore, drill, prospect and mine for coal, silver, copper, lead, zinc, iron and all kinds of ores, metals and minerals of every description whatsoever; to purchase, sell and otherwise deal in iron, steel, copper and other metals; also wood, lumber, cement and all articles consisting in whole or in part thereof; to buy, sell, own, exchange, mortgage, hypothecate and otherwise dispose of and deal in minerals and mineral lands, water and water rights, personal property and all other kinds of property of every description; to do all other things and engage in all other lines of business essential to and contributory to the successful operation of the mining business.

Form 75
Moving Pictures

To exhibit all kinds of moving pictures, vaudeville performances, dramas and other amusements of all kinds; to own and operate and otherwise deal in all kinds of personal and real property essential to the conduct of said moving picture business.

Form 76
Paint

To engage in the general business of manufacturing paints and all paint compounds; to manufacture white lead, red lead, varnishes, oils, stains, fillers, colors, enamels, putty, water-proof coatings and compounds, glue, paint brushes and painters' supplies; to manufacture and deal in all other articles incidental to the conduct of said business.

Form 77
Publishing

To print, publish and sell newspapers, magazines, journals, books, periodicals, lists, pamphlets, and reports of all kinds and of every description whatsoever; to manufacture, distribute and deal in engravings, pictures, drawings, prints and all written, painted, engraved or printed productions and reproductions of every kind, and to do all other things essential to the successful operation of such business.

FORM 78
REAL ESTATE

To buy, sell, deal in, lease, hold or develop real estate; to mortgage or otherwise encumber the same and to erect thereon and manage, care for, maintain, and in any way dispose of all kinds of buildings of every variety and description whatsoever.

FORM 79
SHIP-BUILDING

To construct, operate, repair, maintain and deal in boats and ships of every description; to manufacture, purchase and deal in all mills, tools, machinery and equipment useful or convenient in connection with the construction or equipment of ships and boats of every description; to own and operate all kinds of real and personal property essential to the conduct of said business.

FORM 80
STORAGE

To construct, acquire, maintain, operate and dispose of storage warehouses for the storage and preservation of all kinds of goods, wares and merchandise; to conduct all kinds of business incidental thereto.

FORM 81
TOBACCO

To carry on the business of planting, growing, cultivating, curing and treating tobaccos of all kinds; to buy, sell and deal in the same; to manufacture cigars, cigarettes, pipes and all other articles used by smokers; to manufacture snuff; to construct, purchase or otherwise obtain and dispose of factories, agencies and depots for the manufacture and distribution of tobacco in all its forms; to operate whatever systems of transportation may be necessary for distribution of tobacco to all parts of the world.

(b) General Purpose Clauses

FORM 82
POWER TO ACQUIRE BUSINESS

To acquire the good-will, property, rights, franchises, and assets of all kinds, and to assume in whole or in part the liabilities of any person, firm, association, or corporation in such manner and under

such conditions as may be agreed on; to pay for same in stocks or bonds of the company or in such other manner as may be agreed on.

Form 83
Assuming Other Businesses

To acquire by purchase, lease or otherwise in whole or in part the property, good-will, rights, franchises and assets of every description of any person, firm, association or corporation, and to assume in whole or in part the liabilities of any such person, firm, association or corporation engaged in business similar to that conducted by this corporation or owning property suitable to the purposes of this corporation; to pay for same in stocks or bonds of this company or in cash or such other means as may be agreed upon; to hold, sell or otherwise dispose of in whole or in part properties so acquired and to exercise all powers necessary or contributory to the operation of such business.

Form 84
Consolidation and Cooperation

To consolidate with or otherwise join and enter into agreement with any persons, firms, associations or corporations of any kind whatsoever essential or useful in the carrying out of the purposes of this company.

Form 85
Power to Acquire Own Stock

Subject to the provisions of law, the company may purchase or otherwise acquire, hold and re-issue the shares of its capital stock.

Form 86
Power to Acquire Securities of Other Corporations

To purchase, hold, sell, assign, pledge or otherwise deal in and dispose of shares of capital stock, bonds or other evidences of debt issued or created by any other corporation, foreign or domestic; to exercise all rights and privileges of ownership in connection with such securities, including the right to vote thereon, in the same manner and to the same extent as a natural person could do.

Form 87
Power to Borrow Money by Issuing Securities

To borrow or raise money in any lawful manner; to issue and sell or otherwise dispose of bonds, debentures, warrants, obliga-

tions, negotiable and transferable instruments and evidences of indebtedness of all kinds whether secured by pledge, mortgage, deed of trust or otherwise; and to expend such moneys in the acquisition of businesses, properties, rights or franchises; or to use it as additional working capital or for other legitimate purposes of the company.

Form 88
Power to Do Business Anywhere

To conduct business, have one or more offices, and purchase, mortgage, lease, and convey real and personal property or any estate or interest therein, in any part of the world, but always subject to the local laws. (From charter of Carnegie Company, a New Jersey corporation.)

Form 89
Power to Do Business in Other States

This corporation shall have power to engage in business in other states and in foreign countries; it may establish and operate one or more offices outside of this state; and may hold, purchase, mortgage and convey real and personal property outside of this state.

Form 90
Power to Issue Securities

To issue warrants, bonds, debentures and other negotiable or transferable instruments, secured by mortgage or otherwise, for such amounts as shall from time to time seem advisable. (From charter of Carnegie Company, a New Jersey corporation.)

Form 91
Power to Contract

To enter into, make, perform and carry out contracts of every sort and kind with any person, firm, association, corporation, private, public or municipal, or politic body, and with the government of the United States, or any state, territory or colony thereof, or any foreign government. (From charter of Carnegie Company, a New Jersey corporation.)

Form 92
Power to Aid Other Corporations

To hold for investment, or otherwise to use, sell or dispose of, any stocks, bonds or other obligations of any such other corpo-

ration; to aid in any manner any corporation whose stocks, bonds or other obligations are held or in any manner guaranteed by the company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of such stock, bonds, or other obligations, or to do any acts or things designed for that purpose. (From charter of United States Steel Corporation, a New Jersey corporation.)

Form 93
General Object Clause

For the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all powers which a copartnership or natural person could do and exercise, and which now or hereafter may be authorized by law. (From charter of United States Steel Corporation, a New Jersey corporation.)

(c) Regulating Clauses

Form 94
Accounts

It shall be the duty of the directors to see that true and accurate accounts are kept of all sums of money received and disbursed by the company. It shall also be their duty to see that all accruals both of income and of expense are properly accounted for, and also that all assets or liabilities of the company are adequately classified and accounted for. The books of account shall be kept at the principal office of the corporation or at such other place or places as the directors may indicate.

Form 95
Auditors

Once in every year all accounts of the company shall be examined and the correctness of the balance sheet and profit and loss statement certified to by a firm of certified public accountants. The auditors shall be appointed by the Board of Directors and the remuneration of the auditors shall be fixed by the Board of Directors. The auditors shall have access at all times to the books, accounts and vouchers of the corporation and may at any time require from the officers or directors of the company any such material or explanation as may be necessary for the adequate performance of their duties. The auditors shall sign a certificate

attached to the balance sheet stating whether or not the requirements of the auditors have been met. They shall also report to the stockholders concerning their examination of the accounts, and to the stockholders they shall state whether in their opinion the balance sheet referred to in their report is properly drawn up, so as to exhibit a true view of the affairs of the company. Such reports shall be laid before the stockholders at the regular annual meeting.

Form 96
Power to Examine Corporation Records

The Board of Directors from time to time shall determine whether and to what extent, and at what time or times, and at what place or places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document, except as conferred by statute or authorized by the Board of Directors or by resolution of the stockholders. (From charter of United States Steel Corporation, a New Jersey corporation.)

Form 97
Stock Certificate and Stock Transfers

A stock transfer book shall be provided in such form as may be approved by the Board of Directors. All transfers of capital stock of this company shall be made in this book, being signed by transferor, or by his duly appointed agent. Such transfers shall be accepted by the transferee or by his duly appointed agent. Stock certificates shall be in such form as may be provided for by the Board of Directors and shall be under the seal of the company and signed by the president or vice-president and by the secretary. The stock transfer book shall be kept at the head office of the company where all transfers of stock shall be registered.

Form 98
Power of Directors Over Capital Stock and Dividends

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the Corporation; to determine whether any, and, if any, what part of any, accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends; and to direct and to determine the use and disposition of any surplus or net profits

over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares of the capital stock of the Corporation, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased and acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the Corporation to the extent authorized by law. (From charter of United States Steel Corporation, a New Jersey corporation.)

Form 99
Increase of Capital Stock

At any duly convened meeting of the stockholders the capital stock of the company may be increased by the creation of new shares of such amounts as may be thought expedient. Such new shares shall be issued with such rights and privileges attached as may be provided for either by the stockholders or, in the absence of such determination, by the Board of Directors. Such provisions may be made in such stock as may seem necessary relative to voting rights, preferential dividends and preferences in the distribution of the assets of the company.

(Note: The statutes of the state in question should be consulted relative to any provisions regarding the increase in capital stock.)

Form 100
Reduction of Capital Stock

At any duly convened meeting of the stockholders the capital stock of the Corporation may be reduced by providing for the paying off or cancellation of same or by reducing the liability on shares or otherwise as may be expedient. The Corporation may also at such meeting of stockholders duly convened subdivide or consolidate its shares or any of them as may be expedient.

(Note: The statutes of the state in question should be consulted relative to any provisions regarding the increase in capital stock.)

Form 101
Voting by Proxy

All instruments appointing proxies together with the powers of attorney, if any, under which such instruments are signed, shall

be filed at the head office of the company not less than 24 hours before the time set for the meeting of stockholders, whether such meeting be special, regular or adjourned. In no case, however, shall any proxy be valid for more than nine months from date of its execution.

Form 102
Cumulative Voting

Each shareholder shall be entitled to one vote for each share of stock held at any or all meetings of the stockholders. In any election of directors each stockholder shall be entitled to cumulate his votes upon one or more directors.

Form 103
Dividends

Dividends shall be paid in no case except out of profits of the company. It shall be the duty of the Board of Directors to determine the amount of net profits available for the payment of dividends and the Board of Directors shall, in addition to the payment of regular annual dividends, make such interim distribution of dividends as may in their judgment seem proper.

Form 104
Power of Board of Directors

The management of all business affairs of this company shall be vested in the Board of Directors. They shall, in addition to the powers granted them expressly in the by-laws, exercise such other powers not contrary to the charter or laws of this state as may be necessary for the welfare of the company.

Form 105
Executive Committee

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board of Directors, including power to cause the seal of the Corporation to be affixed to all papers that may require it. (From charter of United States Steel Corporation, a corporation organized under the laws of New Jersey.)

FORM 106
BY-LAWS

Subject always to by-laws made by the stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal by the stockholders be included in the notice of the meeting of the stockholders. (From charter of United States Steel Corporation, a New Jersey corporation.)

FORM 107
LIMITATION ON POWER TO MORTGAGE OR PLEDGE

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the company, which is represented and voted upon in person or by proxy, at a meeting specially called for that purpose, or at an annual meeting, the Board of Directors shall not mortgage or pledge any property of the company or any shares of the capital stock of any other corporation owned by it; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien. (From charter of International Mercantile Marine Company, a New Jersey corporation.)

Capital Stock Clauses

The following are illustrative of charter clauses relative to capital stock.

FORM 108
PREFERRED STOCK; DIVIDENDS CUMULATIVE, PAYABLE QUARTERLY; PREFERRED AS TO PAR VALUE AND ACCRUED DIVIDENDS ON DISSOLUTION

Said preferred stock shall entitle the holder thereof to receive out of the net earnings, and the company shall be bound to pay a fixed yearly cumulative dividend of eight per centum, but no more, payable quarterly, before any dividend shall be set apart or paid on the common stock. Such preferred stock may be issued as and when the Board of Directors shall determine, and the vote or assent of the stockholders shall not be necessary for such issue. The holders of preferred stock shall, in case of liquidation or

dissolution of the company, be entitled to be paid in full, both the principal of their shares and the accrued dividends charged before any amount shall be paid to the holders of the general or common stock. (From charter of Atlantic Snuff Company, a New Jersey corporation.)

Form 109
Preferred Stock Convertible into Common Stock

Any registered holder of preferred stock of the company aforesaid, may, subject to the approval of the directors, elect to have such shares of preferred stock held by him and registered in his name, or any of them, converted into common stock ranking in all respects pari passu with the.....shares of common stock aforesaid. Such election shall be declared by notice in writing to the company, signed by such holder and accompanied by the certificate or certificates of the preferred stock so to be converted, and the Board of Directors shall thereupon adopt a resolution that such conversion be approved and have effect, and the same shall have effect accordingly, and thereupon the certificate for said shares of preferred stock shall be cancelled, and the requisite alterations shall be made in the transfer and stock books, and a certificate for the proper amount of common stock shall thereupon be executed and delivered to such stockholder.

Form 110
Founders' Shares

The total amount of the authorized capital stock of this company, which is.....dollars, consisting of..... shares of the par value of one hundred dollars ($100) each, shall be divided and classified as follows: Of the said stock, ... dollars shall be ordinary or common shares, and the balance, viz., ...dollars are to be called "founders' shares," and are to confer on the holders thereof, ratably and in proportion to the number of founders' shares held by them respectively, the rights following that is to say:

The right to one-fourth the surplus profits of the company of each year which shall remain after paying or providing for the payment out of such profits of a dividend for each share at the rate of six per cent per annum on the whole capital, including both classes issued, and outstanding, and paid up, and after making due provisions for the reserve or surplus funds in accordance with the provisions hereinafter set forth.

The right to one-fourth of any part of the reserve fund afore-

said or the income thereof which it may at any time be determined to divide among all the stockholders.

The right to one-fourth of the surplus assets which in the winding up of the affairs of the company shall remain after paying off the whole of the paid up capital.

Any of the shares of capital, original or increased, may, pursuant to the statutes of New Jersey, be issued with any preferential, special or qualified rights or conditions as regards capital, voting or otherwise, attached thereto, with the consent of the holders of two-thirds of the said founders' shares issued and outstanding and not otherwise, and always so that the rights hereby attached to the founders' shares shall not be infringed.

The directors shall from time to time set aside the percentage on the surplus profits in that behalf mentioned in the next clause hereinafter contained as a reserve or surplus fund to meet liability or contingencies, or as working capital or for such other purpose as the directors shall in their absolute discretion think conducive to the interests of the company.

The profits of each year shall be applicable as follows:

(*a*) Of the profits, fifty per cent each year to be carried to the reserve fund, together with such a sum additional, if any, as the directors shall think proper (with the consent in writing of the holders of two-thirds of the founders' shares), which reserve fund may in the absolute discretion of the directors be applied to the purchase and acquisition of property real and personal, and to the purchase and acquisition of its own capital stock, and the company may take said capital stock in payment or satisfaction of any debt due the company from time to time and to such extent and in such manner and upon such terms as its Board of Directors shall determine, and it may reissue said stock so acquired. Neither said surplus fund nor the property, nor the capital stock so purchased and acquired, nor any of its capital taken in payment or satisfaction of any debt due to the company, shall be regarded as profits for the purpose of the declaration or payment of dividends unless a majority of the Board of Directors, or the holders of a majority of all the stock then issued and outstanding, shall otherwise determine. The unused balance of said reserve fund shall, after the close of each year, be retained in said reserve fund until such reserve fund shall be equal to the capital stock for the time being paid up and outstanding.

(*b*) To the payment of a dividend or dividends to the close of such year on all the stock of the company of both classes issued and outstanding, as hereinbefore provided.

There shall be seven directors of the company, divided into two

classes in respect to the time for which they shall severally hold office. The first class, composed of four members, shall be chosen exclusively by the holders of the founders' shares for the time being, and shall hold their offices for the term of two years, and until the election of their successors, and the second class, composed of three members, shall be chosen exclusively by the holders of the general or common stock, for the time being, and shall hold their offices for the term of one year and until the election of their successors. The successors of the directors of said two classes respectively shall be chosen by the holders of the founders' shares and by the holders of the general or common shares as aforesaid, so that four of the directors shall at all times be chosen by the holders of the general or common shares. (From charter of Sargent Automatic Railway Signal Co., a New Jersey corporation.)

11. Preparation of Charter

Various aids may be secured in preparing a charter. First, the provisions of the state incorporation laws should be consulted. These set forth what the application must contain, and give instructions required for filing the application with the proper state official—usually the secretary of state. Usually it will be found that blank charter forms are in use which have received the O.K. of the state officials. If so, they should be employed in preference to others, because the proper official can examine them more easily and there is less likelihood that the application will be returned for further elucidation.

In using these prepared forms care should be exercised to see that no provisions are left therein which are undesirable from the point of view of the corporation in question. The forms are prepared to meet the needs of corporations generally, and may require deletion or revision as to certain points. Moreover, even though forms have received the official approval they may be defective, as is evidenced by the fact that they undergo frequent revision.

It is always preferable to employ an attorney to supervise the details of incorporation, since no layman can be fully informed as to the detailed procedure required. He can be depended upon to so word the various provisions of the

charter as best to meet the needs of the enterprise. This is particularly true of the so-called "special provisions" which the nature of the business or other considerations may render desirable.

12. Signing and Acknowledgment of Statement of Incorporation

The charter application must be signed by all or a designated number of the incorporators and acknowledged before some officer competent to take acknowledgment of deeds, such as a notary or justice of the peace. If the acknowledgments are all taken at one time one notarial certificate suffices, but if taken at different places separate notarial certificates may be necessary. When an acknowledgment is taken in another state than that of incorporation a certificate should be secured from the officer who takes the acknowledgment showing that he has proper authority.

In connection with the signing of the articles, it should be remembered that the organization will be rendered invalid by a number of signatures less than required by statute. Signing by mark is sufficient. *State* v. *Beck,* 81 Ind. 500. Initials may be used in signing the christian name. If required by statute, seals must be affixed to the signatures.

If the statute requires that the articles be signed and acknowledged by a given number of persons they must both subscribe and acknowledge; for it has been held that where a fewer number acknowledge than are so required, it constitutes a defect fatal to the existence of the corporation.

A frequent statutory provision is that articles of association shall be acknowledged in the same manner as deeds.

13. Publication of Notice

Some states require publication of notice of incorporation. Thus in Iowa "a notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business," stating the

corporation name, principal place of business, nature of business, and other details. *Code of Iowa,* 1927, sec. 8537. Proof of such publication in form of an affidavit of the publisher of the newspaper, must be filed with the secretary of state. *Ibid,* sec. 8358.

In Minnesota "every such certificate of incorporation shall be published in a qualified newspaper in the county of such principal place of business, for two successive days in a daily, or for two successive weeks in a weekly newspaper. Upon filing with the secretary of state proof of such publication, its corporate organization shall be complete." *Gen'l. Statutes of Minn.,* sec. 7445.

In Florida "The proposed charter, together with notice of the intention to apply to the Governor for letters-patent thereon, shall be published at least one time in some newspaper published in the county where the place of business is to be located, which notice shall be signed with the names of at least three of the subscribers, and shall recite that upon some fixed day not less than five days after the day of such publication application shall be made to the Governor for issuance of letters-patent thereon; and the original of said proposed charter shall be upon file in the office of the secretary of state for at least five days before presentation of same to the Governor for issuance of letters-patent thereon." *Fla. Cum. Stat.,* 1925, sec. 4051.

Whatever the requirements for publication may be, if any, they should be complied with in detail, since such statutory requirements are held to have the same force as other statutory provisions.

14. Filing of Charter

As regards filing and recording of the charter, the requirements of the various states differ. In Illinois the "statement of incorporation" must be filed with the secretary of state, who, having examined it to see that it is in conformity with the law, endorses thereon the word "filed," followed by the

month, day, and year of such filing. The corporation is then regarded as fully established so far as the state is concerned. The secretary issues a "certificate of incorporation" to the incorporators incorporating therewith copies of all papers filed in his office. He also retains a copy of such certificate of incorporation in his own office.

In New York the procedure is similar, but it is also required that a copy of the certificate be filed, recorded and indexed in the office of the clerk of the county in which the office of the company is to be located. Any taxes required to be paid before or upon incorporation and the fees for filing and recording the certificate must be paid before filing.

In Massachusetts the first meeting of the incorporators must be held at which by-laws are adopted and officers elected, after which the "agreement of association" together with the record of the first meeting of the incorporators, including the by-laws, must be submitted to the commissioner who, if he finds that the provisions of the law have been complied with, endorses his approval on the articles. Thereupon, on payment of the required fee, the articles are filed in the office of the secretary of state who records them together with the endorsement thereon. *Gen. Laws of Mass.*, 1921, ch. 156, sec. 11. Thereupon the secretary of state issues a certificate of incorporation the form of which is specified in the law. *Ibid,* sec. 12.

In a manual of this character it is impossible to do more than give illustrations of procedure followed in a few states. In every instance the laws of the state in question should be consulted as to their detailed requirements.

Certain other documents must be filed with the proper state official after the same manner as the charter. In Illinois these are: (1) The certificate of any amendment of its charter; (2) The certificate of merger or consolidation; (3) The certificate of dissolution. *Ill. Rev. Stat.*, ch. 32, sec. 131.

On the necessity of filing the articles, the supreme court of Nebraska says: "The authorities are not in harmony on

this question, but the weight of authority is, that where the statute requires the articles of incorporation to be filed with some public officer before the commencement by the proposed corporation of the business for which it is organized, such filing is a condition precedent to the right of such corporation to perform any corporate functions; consequently, until a compliance with the statute, the corporation has no valid existence as a de jure corporation." *Copps* v. *Hastings Pros. Co.*, 4 Nebr. 470.

For sufficient reason, the secretary of state may refuse to file the articles of association, and should he file insufficient articles no corporation would result.

15. Nature of Certificate of Incorporation

The certificate of incorporation may consist of the application for a charter indorsed by the proper state officials, or it may, as in Massachusetts, be a separate formal document issued by the secretary of state. Regardless of this distinction, it is customary for the secretary of state to issue certified copies of the charter upon payment of the required fee for copying and affixing the state seal.

16. Amendments to Charter

For various reasons charter amendments may become necessary. In some states provision is made whereby the charter may be amended by a simple procedure, if done before the organization of the corporation is completed. Thus in Illinois the law provides:

"At any time within six months from date of issuance of certificate of incorporation and before the issuance of any part of the capital stock, the incorporators may surrender to the secretary of state the certificate of incorporation first issued, and file in lieu thereof a new statement of incorporation. Upon the surrender of such certificate, accompanied with the joint and several affidavits of a majority of the incorporators that no part of the capital stock of such

corporation has been issued by virtue of the authority of the certificate as surrendered, or debts incurred the secretary of state shall file such new statement and shall cancel the filing of the statement first filed and approved." *Ill. Rev. Stat.*, ch. 32, sec. 58. Similar provisions are found in New Jersey, New York and Delaware.

Usually, however, amendments are made after incorporation has been completed, the need for such amendment arising out of changed conditions.

The laws of most states lay down minutely the procedure to be followed to secure charter amendments. In a general way it may be said that the procedure for amendment is analogous to that required to incorporate in so far as formal requirements are concerned. This is because a charter cannot be changed in any way except by the power that granted it.

The statutes of some states list the various things that may be made the subject matter of charter amendments, as in New York, Illinois, and Massachusetts. Other states, such as Michigan, merely authorize, in general terms, the stockholder to make such amendments as may be deemed necessary, providing the requirements as to voting be met, and providing nothing be done contrary to the statutes of the state. Such amendments may usually be voted on at either the annual or a special meeting of the stockholders. If at an annual meeting, it is customary to require that notice be given in the notice of the annual meeting.

17. Amendment Procedure

The details of procedure in amending a charter naturally differ in the various states, although certain general principles of law may be said to control regardless of what state may be under consideration. The amendment must invariably receive the assent of a prescribed number of stockholders or a prescribed percentage of the outstanding voting stock, and it must be in conformity with the constitution and laws of the state. Frequently the favorable action

of the board of directors is required; in fact, it is sometimes prescribed in the statute that the amendment must originate with the board of directors, who must give notice of such desire to the stockholders in order that they may act on it at an annual or special meeting. *Ill. Rev. Stat.*, ch. 32, sec. 59.

The vote required to amend the charter may be prescribed by statute, as in New York, where two-thirds of all outstanding shares must assent in order to extend, limit or otherwise change the purposes and powers of the corporation, and a majority of such shares must assent in order to change the number of directors or the location of the office. *Cons. Laws N. Y.*, ch. 60, sec. 35.

The law of Texas leaves to the corporation the determination of the manner of amending its charter, merely providing that it "may amend or change its charter or act of incorporation by filing, authenticated in the same manner as the original charter, such amendments or changes with the Secretary of State." *Rev. Civ. Stat. Tex.*, Art. 1314.

In Oregon the statute provides for the filing of "supplementary articles of incorporation" whenever a three-fourths vote of all stock subscribed is in its favor. In this way the corporate name may be changed or additional lines of business undertaken if in harmony with the original purpose of the corporation; and by a seven-eighths vote of all subscribed stock any new line of business may be undertaken. The fee for filing such supplementary articles is $5, payable to the secretary of state. *Ore. Laws*, 1920, secs. 6881-2.

In 1927 Oregon passed a law authorizing a corporation to amend its articles of incorporation by first publishing notice of such intention, authorized by a majority of its directors, once a week for four weeks in a newspaper of general circulation in the state, and with the written consent of holders of two-thirds of its stock. *Gen. Laws, Ore.*, 1927, ch. 105, sec. 4. "Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with copy of the proceedings of the stockholders

or members and of the directors, shall be filed with the commissioner and by him submitted to the corporation commissioner, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the commissioner. The amendment shall not take effect until the commissioner shall deliver to the company his certified copy of the amendment and of the certificate of the corporation commissioner."

It has been held that where an amendment to the charter marks a fundamental change in the business of the corporation, such amendment must receive the assent of all the stockholders, providing the law authorizing it was passed after the corporation was established. *Am. Seating Co.* v. *Bullard,* 290 Fed. 896.

All states reserve the right to alter, amend or repeal all charters whatsoever granted by them. In reality the exercise of such powers are limited by that which is just and reasonable.

18. Issuance of Charter

All requirements of the statutes having been complied with, issuance of the charter or certificate of incorporation constitutes the concern in question a de jure corporation. The issuing officer possesses no discretion as to the issuance of the certificate if all statutory requirements have been complied with; but may refuse issuance if the statutes have not been substantially complied with, or if to issue the articles would be against public policy. Also, failure to pay the incorporation fee is usually sufficient ground for refusal to issue the certificate. *Holmes Elec. Protect. Co.* v. *Armstrong,* 162 N. Y. S. 770.

Having issued the certificate, the issuing officer has no power to revoke it, unless the incorporators default in some condition precedent, such, for example, as neglecting to organize the company. Failure to organize within a prescribed time would constitute sufficient reason for revocation of the charter.

19. Incorporators

An incorporator is one of those to whom the charter of a corporation is granted, or one of those who file the certificate of incorporation under a general incorporating statute. Cook on *Corporations,* 8th ed., sec. 10. Although the word "incorporator" is sometimes used synonymously with the word "stockholder," this is a loose use of the word. Strictly, the incorporators cease to exist when the stockholders come in. *Chase* v. *Lord,* 77 N. Y. 1, 11.

It is a customary requirement that incorporators be subscribers to the stock of the corporation, although it has been held, in Pennsylvania, that this need not be the case. *Densmore Oil Co.* v. *Densmore,* 64 Pa. St. 43, 44. In most states it is required by statute that incorporators be subscribers. Unless so required, or unless such requirement may be inferred from the various statutory provisions, the incorporators need not be subscribers. *Bristol, etc. Trust Co.* v. *Jonesboro, etc. Trust Co.,* 101 Tenn. 545. "Generally, corporate existence is created by the execution and filing of an instrument by men who may never hold stock, and the relationship of stockholder is created either by the purchase of stock or the subscription therefor accepted by the corporation." *Rehbein* v. *Rahr,* 109 Wis. 136, 147.

If, however, as is usually the case, incorporators are shown as subscribers in the certificate of incorporation, they become subscribers as soon as the application is granted. It is then their privilege to proceed with the organization of the enterprise by adopting by-laws, electing a board of directors, and so on. It is not necessary that they pay for the stock before doing so, or that they be given stock certificates. *Cummings* v. *State,* 149 Pac. 864.

20. Specific Qualifications of Incorporators

For special requirements in the state of incorporation the laws thereof must be consulted. Among such requirements are usually found the following:

1. Formerly incorporators were required to be natural persons. Now, however, corporations are empowered to act both as incorporators and stockholders in most states. However, corporations can act neither as incorporators nor as stockholders unless empowered so to do by the laws of the state.

2. Some states require that one or more incorporators be citizens or residents of the state of incorporation. In Illinois all of the incorporators must be citizens of the United States and one must be a citizen of the state. In Wisconsin there is no requirement as to citizenship, but all incorporators must reside in the state, and two-thirds must be citizens of the United States.

If there occurs no provision regarding citizenship in the state laws, it is possible that all incorporators may be aliens.

3. To be an incorporator one must be capable of contracting. Under the common law married women are excluded, but most states have removed this disability by statute and married women in these states may become incorporators. Minors, insane persons, and others incompetent to contract for any reason whatever cannot become incorporators.

In Pennsylvania, under the common law, married women could not act as subscribers to articles of incorporation; but this disability has been removed by statute. At the present time married women may act as incorporators in most of the states.

Minors cannot become incorporators unless qualified to do so by statute.

Usually the specific qualifications of incorporators are not stated in the general incorporation laws but are left to be determined by the common rule or from the provisions of other statutes of the state. The most frequent specific provision is that a certain number shall be residents of the state of incorporation. The laws of the state in question should be consulted for any relevant provisions.

21. Dummy Incorporators

Frequently the persons who expect to become the chief owners of a corporation do not care to act as incorporators. Sometimes they are disqualified by provisions of the state laws. In such cases it is customary to secure substitutes, known as "dummies," who execute the charter and go as far towards organizing the corporation as may be desirable. They then assign their interests to the real owners and discontinue their connection with the corporation.

As a rule, the persons who act as dummy incorporators are the lawyers, or employees of the lawyers, who are given general supervision of the work of incorporating and organizing the company.

Just where the activities of the dummy incorporators should be discontinued is a matter to be decided by the real owners of the business, perhaps acting upon the advice of their lawyers. They may take upon themselves the task of organizing the company, or they may desire that the dummy incorporators proceed with the organization, they themselves taking active charge of affairs only when the time arrives for active participation in business.

22. Number of Incorporators

To determine the number of incorporators required the statutes of the state of incorporation must be consulted. Usually the number permitted is not less than three, but in some states five is the minimum. The maximum is prescribed in no state. One reason for exceeding the minimum number of incorporators is to enable different groups to secure representation, hence a voice in the organization of the company.

23. State Forms

For illustration, two forms prescribed by the secretary of state of Illinois are reproduced on following pages. Practically all of the states provide similar forms, but these are

so numerous that to reproduce them in a manual of this kind is impossible. These may be secured by addressing the secretary of state of the state in question. The use of such forms is not, as a rule, compulsory; but wherever possible they should be employed because they are usually drawn to meet statutory requirements and because the members of the staff of the office of the secretary of state are familiar with them, so that the work of examination and approval is facilitated. For an exhaustive compilation of such forms, see Fletcher's *Corporate Forms and Precedents*.

FORM 111

STATEMENT OF INCORPORATION

Fees Payable in Advance.

(THIS STATEMENT MUST BE FILED IN DUPLICATE)

STATE OF ILLINOIS, } ss.
.....County, }

To LOUIS L. EMMERSON, Secretary of State:

We, the undersigned, adult citizens of the United States, at least one of whom is a citizen of Illinois,

Name	Number	Address Street	City	State
.....				
.....				
.....				
.....				
.....				
.....				

propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919; and all Acts amendatory thereof; and, for the purpose of such organization, we hereby state as follows, to-wit:

1. The name of such corporation is.....
2. The object for which it is formed is.....
3. The duration of the corporation is.....Years
4. The location of the principal office is.....Street, Avenue ....., County of.....State of Illinois.
5. The total authorized capital stock is {Preferred $.....} {Common $.....}

and.....shares of {Preferred} {Common} without par value.

6. The amount of each share having a par value is.....
7. The number of shares having a par value is.....
8. The number of shares of no par value is.....
9. The name and address of the subscribers to the capital stock, and the amount subscribed and paid in by each, are as follows:

Name	Address Number Street City State	Number of Shares	Amount Subscribed	Amount Paid in
.....	.....	.....	$.....	$.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

NOTICE: In case subscription list or preferred stock provisions are too long to get in the above space, insert at this place on separate sheet of legal cap leaving two inches at top for binding.

10.[1]

11. Amount of capital stock which it is proposed to issue at once:

(a) On shares having no par value... {Preferred $.....} {Common $.....}

(b) On shares having a par value of $..... {Preferred $.....} {Common $.....}

[1] See page 179 for footnote.

12. Amount of capital stock actually paid in:

(a) On shares having no par value... { Preferred $..... / Common $.....

(b) On shares having a par value of $..... { Preferred $..... / Common $.....

13. Amount of capital stock paid in cash is..... $.....

14. Capital stock paid in property as follows:.... $.....

15. The location and general description of such property is as follows:

.....
.....
.....
.....
.....

16. The management of the corporation shall be vested in .....directors.

17. The name and address of the first board of directors, at least one of whom is a resident of Illinois, and the respective term for which elected are as follows:

Name	Address Number	Street	City	State	Term for Which Elected
.....	.....				.....
.....	.....				.....
.....	.....				.....
.....	.....				.....
.....	.....				.....
.....	.....				.....
.....	.....				.....
.....	.....				.....

18. Subject to the conditions and limitations prescribed by "The General Corporation Act" of Illinois, this corporation shall have the following powers, rights and privileges:

To have succession by its corporate name for the period limited in its certificate of incorporation, or any amendment thereof;

To sue and be sued in its corporate name;

To have and use a common seal and alter the same at pleasure;

To have a capital stock of such an amount and divided into shares, with a par value or without a par value, and to divide such capital stock into classes, with such preferences, rights, values and interests as may be provided in the Articles of Incorporation, or any amendment thereof; and in case provision be made therefor in the Articles of Incorporation, or any amendment thereof, any and all classes of preferred stock may be issued in one or more series of the same class, each such series carrying such rate of dividends not exceeding eight per cent (8%) per annum, or such lesser amount as may be fixed in the Articles of Incorporation, or any amendment thereof, and the shares of each such series being redeemable at such redemption price and bearing such particular designation as the Board of Directors, subject to such restrictions as may be imposed in the Articles of Incorporation, or any amendment thereof, shall, by resolution, determine and fix prior to the issue of any such stock of such series: Provided, however, that whenever the Board of Directors shall, by resolution, have authorized any such series of preferred stock, a copy of such resolution, duly certified by the secretary or assistant secretary of the corporation, and under its seal, and the facts set up in such certificate verified by the oath of the President or Vice-President shall be transmitted to the Secretary of State, and if the same shall conform to law and to the Articles of Incorporation, and all amendments thereof, the same shall be filed in the office of the Secretary of State.

To acquire, and to own, possess and enjoy so much real and personal property as may be necessary for the transaction of the business of such corporation, and to lease, mortgage, pledge, sell, convey or transfer the same; and to acquire and to own real property, improved or unimproved for the purpose of providing homes for its employes or aiding its employes to acquire and own homes and to improve, lease, mortgage, contract to sell, sell, convey or transfer the same, and to loan money to its employes for such purpose upon such terms as may be agreed upon.

To own, purchase, or otherwise acquire, whether in exchange for the issuance of its own stock, bonds, or other obligations or otherwise, and to hold, vote, pledge, or dispose of the stocks, bonds, and other evidences of indebtedness of any corporation, domestic or foreign;

To borrow money at such rate of interest as the corporation

may determine without regard to or restrictions under any usury law of this State, and to mortgage or pledge its property, both real and personal, to secure the payment thereof;

To elect officers, appoint agents, define their duties and fix their compensation;

To lease, exchange or sell all of the corporate assets with the consent of two-thirds of all of the outstanding capital stock of the corporation at any annual meeting or at any special meeting called for that purpose;

To make by-laws not inconsistent with the laws of this State for the administration of the business and interests of such corporation;

To conduct business in this State, other states, the District of Columbia, the territories, possessions, and dependencies of the United States and in foreign countries and to have one or more offices out of this State, and to hold, purchase, mortgage, and convey real and personal property outside of this State necessary and requisite to carry out the object of this corporation;

In time of war to transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities, and to loan money to the State or Federal government for war purposes;

To cease doing business and to surrender its charter;

To have and exercise all the powers necessary and convenient to carry into effect the purpose for which such corporation is formed.

19. An estimate of the per cent of tangible property of the corporation to be used in Illinois for the following year is.....

20. An estimate of the per cent of the business of the corporation which will be transacted at or from places of business in Illinois for the following year is.....

21. Give the location of the principal places of business of the corporation for the following year and an estimate of the amount of business which will be transacted through each.

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.....
..... } Incorporators
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.....
.....

OATH AND ACKNOWLEDGMENT

STATE OF ILLINOIS, } ss.
.....County, }

I, ...a Notary Public in and for the County and State aforesaid, do hereby certify that on the..... day of.....A. D. 19...., personally appeared before me.....
.....
.....
.....
.....
.....
to me personally known to be the same persons who executed the foregoing and severally acknowledged that they executed the same for the purposes therein set forth, and being duly sworn hereby declared on oath that the foregoing statements made, subscribed and verified by them are true in substance and in fact.

In Witness Whereof, I have hereunto set my hand and seal the day and year above written.

.....
(Seal) Notary Public.

INCORPORATION FEES

Initial fee of 1/20 of one per cent on the issued capital stock, with a minimum fee of $20.00, also franchise fee as required by Section 129 of the General Corporation Act.

[1] NOTE: In paragraph 10 you should set out a brief description of the rights and preferences of the holders of preferred stock, or any other provision for the regulation of the business and the conduct of the affairs of the corporation. In case of a building corporation you will also give in the same space a specific and definite description of the site of such building. In order to avoid delay read carefully each paragraph in the statement before interpolating the data required. Before execution of the statement compare every recital in the statement and see whether or not it balances with every other recital relating to the same matter.

FORM 112

CERTIFICATE OF AMENDMENT

This certificate must be filed in duplicate.

STATE OF ILLINOIS, }ss.
County of ..... }

I hereby certify that at a special meeting of the Stockholders of the.....held at ..... on.....day of..... A. D. 19...., at.....o'clock.....M., pursuant to notice required by law, which said notice was delivered personally (or deposited in the post office properly posted) at least ten days before the time fixed for such meeting, properly addressed to each Stockholder, signed in the manner provided in the by-laws of said Corporation, stating the time, place and object of such meeting.

The following resolution was adopted, at least two-thirds of all the votes represented by the whole stock of said Corporation issued and outstanding voting therefor:

.....
.....
.....
.....
.....
.....

Affix Corporate Seal
Here.

Attest:.....
Secretary.

STATE OF ILLINOIS, }ss.
County of ..... }

I, ...being duly sworn, declare on oath that I am President of the Corporation mentioned in the foregoing certificate, and that the statements therein made are true in substance and in fact.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of said Corporation to be affixed, this..... day of....., A. D. 19.....

.....
President.

Subscribed and sworn to before me this.....day of ....., A. D. 19.....

.....
Notary Public.

NOTICE: This certificate may be used in making all amendments to the Articles of Incorporation other than dissolution and consolidation of corporations. In case of decrease in capital stock you should insert in the certificate a clause substantially as follows:

RESOLVED, That the capital stock is hereby DECREASED from $.....consisting of.....shares of the par value of $.....and..... shares of stock of no par value to $..... consisting of.....shares of the par value of $.....and.....shares of no par value.

The amount of the capital stock issued and outstanding is .....and the manner by which the decrease is effected is as follows, to-wit:.....

If the capital stock is increased, the resolution should be substantially in the following form:

RESOLVED, That the capital stock is hereby INCREASED from $.....consisting of.....shares of the par value of $.....and..... shares of stock of no par value to $.....consisting of.....shares of the par value of $..... and.....shares of no par value.

The total amount of capital stock already authorized is $.....

The amount of the increased capital stock which is proposed to issue at once and which will be paid in cash is as follows:

.....shares having a par value of $.....

per share is { common $..... / preferred $.....

.....shares having no par value is { common $..... / preferred $.....

The amount of the increased capital stock which is proposed to issue at once for property and appraised value thereof are as follows:

.....shares having a par value of $.....

per share is { common $..... / preferred $.....

.....shares having no par value is { common $..... / preferred $.....

The location and a general description of such property are as follows:

.....

.....

The fees required are covered by Sections 96, 97, 105 and 129 of the General Corporation Act.

Blanks for filing amendments where the notice prescribed by statute is waived will be furnished upon request.

Form 113

Amended Certificate of Incorporation of American Steel Foundries

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

I. The name of the corporation is American Steel Foundries.

II. The location of its principal office in the State of New Jersey is at No. 15 Exchange Place, in the City of Jersey City, County of Hudson. The name of the agent therein and in charge thereof, upon whom process against the corporation may be served, is The Corporation Trust Company. Said office is to be the registered office of said corporation.

III. The objects for which the corporation is formed are:

To manufacture iron, steel, manganese, coke, copper, lumber and other materials, and all or any articles consisting, or partly consisting, of iron, steel, copper, wood or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use or develop any lands containing coal or iron, manganese, stone or other ores, or oil, and any woodlands, or other lands for any purpose of the Company.

To mine, or otherwise to extract or remove, coal ores, stone and other minerals and timber from any lands owned, acquired, leased or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in, iron, steel, manganese, copper, stone, ores, coal, coke, wood, lumber and other materials, and any of the products thereof, and any articles consisting, or partly consisting, thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, gas works, and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation and to sell the same, or otherwise to dispose thereof, or to maintain

and operate the same, except that the Company shall not maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease, or otherwise to acquire, and to hold, use, own, operate and introduce, and to sell, assign, or otherwise dispose of any trade-marks, trade names, patents, inventions, improvements and processes used in connection with, or secured under letters patent of the United States, or elsewhere, or otherwise; and to use, exercise, develop, grant licenses in respect of, or otherwise to turn to account any such trade-marks, patents, licenses, processes, and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own and dispose of any and all property, assets, stocks, bonds and rights of any and every kind; but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To acquire by purchase, subscription or otherwise, and to hold or dispose of, stocks, bonds or any other obligations of any corporations formed for, or then or theretofore engaged in or pursuing any one or more of the kinds of business, purposes, objects or operations above indicated, or owning or holding any property of any kind herein mentioned; or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell or dispose of, any stocks, bonds or other obligations of any such corporation; to aid in any manner any corporation whose stocks, bonds or other obligations are held or are in any manner guaranteed by the Company, and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any such stocks, bonds or other obligations, or to do any acts or things designed for any such purpose; and, while owner of any such stocks, bonds or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereon.

The business or purpose of the Company is from time to time to do any one or more of the acts and things herein set forth; and it may conduct its business in other States and in the Territories and in foreign countries, and may have one office or more than one office, and keep the books of the Company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage and convey real and personal property either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stocks, bonds or other obligations, or any property which may be acquired by it, to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends or bonds or contracts or other obligations; to make and perform contracts of any kind and description; and in carrying on its business, or for the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all other powers which a copartnership or natural person would do and exercise, and which now or hereafter may be authorized by law.

IV.[1] The total authorized capital stock of the corporation is two hundred fifty thousand (250,000) shares of preferred stock of the par value of one hundred dollars ($100) each amounting in the aggregate to twenty-five million dollars ($25,000,000), and one million (1,000,000) shares of common stock without any nominal or par value.

The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits of the corporation, dividends at the rate of seven (7) per centum per annum, on the par value thereof, and no more, payable quarterly on the last days of March, June, September and December in each year. The dividends on such preferred stock shall be cumulative, and shall be payable before any dividends shall be paid upon or set apart for the common stock, so that if for any year dividends amounting to seven (7) per centum shall not have been paid upon the preferred stock, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

While any preferred stock remains outstanding, the corporation shall maintain a Sinking Fund to which payments shall be made out of the net earnings of the corporation, as hereinafter provided. Payments shall be made to the Sinking Fund on the last day of December in the year 1920, and on the last day of December in each and every year thereafter and until all of the preferred stock shall have been retired and cancelled. Each payment shall consist of an amount not

[1] As amended Oct. 18, 1906; Jun. 29, 1908; May 5, 1919; Jun. 5, 1919; May 13, 1925.

less than one (1) per centum of the par value of the maximum amount of preferred stock outstanding at any one time prior to the date for such payment. The Directors may from time to time apply the funds in the Sinking Fund [and whenever the amount in the Sinking Fund shall be in excess of one hundred thousand dollars ($100,000) shall within sixty days, apply such excess] to the redemption or purchase, either in the open market or at private sale, at not exceeding the redemption price hereinafter set forth, of preferred stock, provided, however, that no preferred stock shall be redeemed within three (3) years from its date of issue; preference to be given so far as practicable in the judgment of the Board of Directors to the stock obtainable at the lowest price. Until so applied, the moneys in the Sinking Fund shall be set apart in a special fund and shall not be used in the general conduct of the company's business.

Of said preferred stock ten million dollars ($10,000,000) par value thereof may be issued at any time, for such lawful consideration as the Board of Directors shall determine, but no additional preferred stock shall be issued at any time unless the net earnings of the corporation applicable to the payment of dividends on its preferred stock for a period of twelve calendar months ending not more than ninety days prior to the issuance of such preferred stock shall have amounted to at least two times the annual dividend requirements on the preferred stock then outstanding and presently to be issued. In computing such net earnings there may be included the earnings for such full period of any plant which may have been owned by the company for a less period, and of any subsidiary or other corporation all the shares of stock of which are owned by this corporation, and also, in case less than all of the stock of any corporation has been so owned by this corporation, a share of the earnings of such corporation for such full twelve months' period; the share to be the proportion of the total earnings of the corporation for the full twelve months' period which the number of shares of the stock of the corporation which are owned by this corporation, bears to the total stock of such corporation.

No dividends shall be declared or paid upon the common stock of the company if any dividend upon the preferred stock be in arrears, or if there be any pending default in the Sinking Fund provisions, as hereinabove provided. Whenever all cumulative dividends upon the preferred stock and all Sinking Fund requirements for all previous years shall

have been paid, and the accrued quarterly installments for the current year shall have been declared and paid, or there shall have been set aside from the surplus or net profits of the company a sum sufficient for the payment thereof, the Board of Directors may declare dividends upon the common stock, payable then or thereafter out of the remaining surplus or net profits of the corporation.

The company shall not, without the consent of the holders of two-thirds in amount of the outstanding preferred stock of this company, expressed in writing or at a meeting called for that purpose, either (1) mortgage or create any lien upon all or part of its property, or (2) sell or otherwise dispose of its property and business as an entirety, or substantially as an entirety, nor shall the company without such consent permit any stock owned by it in any other corporation, a majority of the capital stock of which is owned by the company, to be voted either (1) to mortgage or create any lien upon all or part of the property of such company, or (2) to sell or otherwise dispose of the property and business of such company as an entirety, or substantially as an entirety; but neither of these restrictions shall apply to a pledge of notes, stocks or other securities in the usual course of business, or to transactions between the company and any subsidiary or other corporation a majority of whose capital stock is owned by the company; and nothing herein contained shall affect the right of the company to acquire any plant or property or the shares of stock of any corporation, subject to or having outstanding at the time of such acquisition, any mortgage or bond issue, nor shall it affect the right of the company, or any company a majority of whose stock may be acquired by it, to extend the date of the maturity of any mortgage or bond issue or issues outstanding at the date of such acquisition, or the right to renew such mortgage or bond issue or issues for the purpose of paying off any mortgage or bond issue or issues existing at the date of such acquisition.

The holders of the preferred stock shall not, except as hereinafter provided (and the preferred stock is issued and accepted upon the express understanding and condition that they shall not) be entitled to vote at any meeting of the stockholders, nor shall they be entitled to notice of such meetings; provided, however, that the authorized preferred stock of the corporation shall not be increased nor shall the rights of the holders thereof be diminished by the creation of additional or superior preferred stock, or in any other manner whatsoever,

without the consent (expressed in writing or at a meeting of the stockholders called for that purpose) of the holders of two-thirds in amount of the preferred stock of the company at such time outstanding. In case at any time the company shall be in arrears in the payment of four consecutive quarterly dividends on its preferred stock, or shall be in default of any other provision or restriction herein contained for the benefit or protection of its preferred stockholders, and such default shall have continued for a period of six months after written notice thereof by or on behalf of any preferred stockholder, then and in every such event, but only until all such arrearages have been paid and such default or defaults made good) the holders of the preferred stock shall have the right to vote at any and all meetings of the stockholders of the company, and shall be entitled to notice thereof, to the same extent as though their right to vote had not been restricted herein.

The corporation may on any dividend date, in such manner as the Board of Directors may from time to time determine, redeem all or any part of the preferred stock then outstanding, at any time after three years from the date of issue, by paying to the holder or holders thereof one hundred ten dollars ($110) per share and the amount of all dividends cumulated upon the shares to be redeemed up to the date fixed for redemption; provided that not less than thirty (30) days previous notice in writing of any such proposed redemption shall have been given to the record holder or holders of the stock to be redeemed by mailing such notice to such holder or holders at his or their record address as shown on the books of the corporation.

In the event of any liquidation, dissolution or winding up, whether voluntary or involuntary, of the company, the holders of the preferred stock shall be entitled to be paid one hundred ten dollars ($110) per share and the unpaid cumulative dividends accrued thereon, before any amount shall be paid to the holders of the common stock; and after such payment in full to the holders of the preferred stock the remaining assets and funds shall be divided between and paid to the holders of the common stock, according to their respective shares.

The common stock of the company may be increased by vote of the holders of two-thirds in amount of the outstanding common stock, and without any action on the part of the holders of the preferred stock, notwithstanding any voting

rights hereinbefore conferred upon the holders of the preferred stock. In the event of any increase in the common stock of the corporation, the holders of common stock shall be entitled (to the exclusion of the holders of preferred stock) to subscribe for and take all of such increased common stock.

The common stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors thereof.

V. The names and post-office addresses of the incorporators, and the number of shares of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions, being three thousand dollars, is the amount of capital stock with which the corporation will commence business), are as follows:

Name	Post-office Address	Number of Shares Preferred Stock	Number of Shares Common Stock
Howard K. Wood	15 Exchange Place, Jersey City, N. J...	5	5
Kenneth K. McLaren	15 Exchange Place, Jersey City, N. J...	5	5
Donald H. Mann	15 Exchange Place, Jersey City, N. J...	5	5

VI. The duration of the corporation shall be perpetual.

VII. The number of directors of the company shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the Board of Directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors, whose terms shall expire in that year, shall be elected to hold office for the term of three years, so that the term of one class of directors shall expire in each year.

The number of the directors may be increased as may be provided in the by-laws. In case of any increase of the number of the directors, the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting; and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the

term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their meetings outside of the State of New Jersey, at such places as from time to time may be designated by the by-laws or by resolutions of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the directors.

Unless authorized by votes given in person or by proxy by stockholders at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose or at an annual meeting, the Board of Directors shall not mortgage or pledge any of its real property or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien. As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the 17th section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors. Any other officer or employee of the Company may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the Board

of Directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors, by the affirmative vote of a majority of the whole board, may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The Board of Directors may appoint not only other officers of the Company, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the President, of the Treasurer and of the Secretary, respectively.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the Company, and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations or shares of its own capital stock to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the Company's capital stock as provided by law.

With the assent in writing or pursuant to the vote of two-thirds of the capital stock issued and outstanding, the directors shall have power and authority to sell, assign, transfer, convey or otherwise dispose of the property and assets of this corporation as an entirety on such terms and conditions as the directors shall deem just and expedient.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution of the stockholders.

Subject always to by-laws made by the stockholders, the Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice

of such proposed alteration or repeal be included in the notice of the meeting.

In Witness Whereof, we have hereunto set our hands and seals the 26th day of June, 1902.

Howard K. Wood. [seal.]
Kenneth K. McLaren. [seal.]
Donald H. Mann. [seal.]

Signed, sealed and delivered in the presence of
Geo. R. Beach.

State of New Jersey, }
County of Hudson. } ss.

Be it remembered that on this 26th day of June, 1902, before the undersigned, personally appeared Howard K. Wood, Kenneth K. McLaren and Donald H. Mann, who, as I am satisfied, are the persons named in, and who executed the foregoing certificate, and I having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

Geo. R. Beach,
Master in Chancery of New Jersey.

Endorsed:

"Received in the Hudson Co. N. J. Clerk's office June 26" A. D. 1902 and Recorded in Clerk's Record No.———on Page———

Maurice J. Stack,
Clerk."

"Filed June 27 1902

S. D. Dickinson,
Secretary of State.

State of New Jersey.
Department of State.

I, ..., Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a truy copy of the Certificate of Incorporation of the American Steel Foundries, as amended and in force at the date of this certificate, as the same is taken from and compared with the original Certificate of Incorporation and the amendments thereto filed in my office and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this.....day of ....., A. D. 19.....

.....,
Secretary of State.

Form 114

Charter of Fire Insurance Company of Chicago
Notice of Incorporation

The following notice and copy of charter of the Fire Insurance Company of Chicago appeared in the *Chicago Journal of Commerce* in compliance with the statutory requirements:

Department of Trade & Commerce,
Division of Insurance,
Springfield, Illinois.

We, the undersigned incorporators,
James W. Knox, 246 Jackson Avenue, River Forest, Ill.
Eugene M. O'Callaghan, 1922 S. Turner Avenue, Chicago, Ill.
Walter A. Freeman, 3136 N. Kilpatrick Avenue, Chicago, Ill.
Elmer J. O'Connell, 5419 W. Washington Boulevard, Chicago, Ill.
C. M. Gunsteens, 5249 Berteau Avenue, Chicago, Ill.
William H. Greasley, 4717 N. Avers Avenue, Chicago, Ill.
Frank L. Schaber, 2355 S. Kolin Avenue, Chicago, Ill.
Victor E. Jorgensen, 28 Washington Boulevard, Oak Park, Ill.
James Callahan, 4921 Sheridan Road, Chicago, Ill.
George W. Brown, 3925 Janssen Avenue, Chicago, Ill.
Geo. L. Minster, 8727 S. Ada Street, Chicago, Ill.
John J. Deneen, 6312 N. Paulina Street, Chicago, Ill.
Ernst A. Lawrenz, 7328 S. Union Street, Chicago, Ill.
S. P. Stephany, 2065 N. Leavitt Street, Chicago, Ill.
Eugene F. Berg, 1506 Bryn Mawr Avenue, Chicago, Ill.

hereby declare our intention to organize and incorporate a company, pursuant to "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, "An Act providing the kinds of business which may be transacted by fire insurance companies, etc.," approved June 30, 1925, and the Acts amendatory thereto, to make insurance on dwelling houses, stores and all kinds of buildings and upon household furniture and other property against loss or damage by fire, lightning and tornadoes, and either or any of said causes, and the risks of inland navigation and transportation, as well as:

(Here follows a statement of the objects of the company identical with those set forth in (a), (b), (c) and (d) in the charter below, and omitted to avoid repetition.)

We propose to and do hereby adopt the following charter:

(1) The name of the company shall be Fire Insurance Company of Chicago.

(2) The principal office of the company shall be located at Chicago, Illinois.

(3) The corporate powers of the company shall be exercised by a board of directors of seventeen (17) members, at least a majority of which directors shall be citizens of the State of Illinois. The directors shall have the power to make, alter or amend by-laws not inconsistent with the constitution and laws of the State of Illinois, and for the government of the officers and conduct of the affairs of the company.

(4) The first board of directors shall be elected at the first meeting of the stockholders immediately after the completion of the organization of the company, and shall be divided into three equal classes, or as nearly equal as possible. The term of the first class shall expire at the next annual meeting of the stockholders following the organization of the company; the term of the second class shall expire at the second annual meeting of the stockholders following the organization of the company; the term of the third class shall expire at the third annual meeting of the stockholders following the organization of the company; and at each such annual meeting one-third of the board of directors, or as many as there are in any one class, shall be elected and hold office for three (3) years, and until their successors are elected and qualified. In case of an increase or decrease in the number of directors, the additional or decreased number shall be divided among the respective classes so that the board of directors shall at all times be composed of three classes consisting as nearly as possible of equal numbers. The term of office of one class shall expire at each annual meeting.

(5) In all elections for directors each stockholder shall have the right to vote in person or by proxy as provided by the by-laws, and each share of stock shall be entitled to as many votes as there are directors to be elected, in accordance with Article XI, Section 3 of the constitution of the State of Illinois.

(6) Vacancies in the board of directors shall be filled by a majority vote of the stockholders at the next annual meeting of the stockholders when directors shall be elected for the ensuing terms.

(7) The capital stock of the company shall be Two Million Dollars ($2,000,000), divided into eighty thousand (80,000) shares of the par value of Twenty-five Dollars ($25) each. The manner of conducting the company shall be upon the stock plan.

(8) The objects and purposes of the company shall be to make insurance on dwelling houses, stores and all kinds of buildings and upon household furniture and other property, against loss or

damage by fire, lightning and tornadoes, or either or any of said causes and the risks of inland navigation and transportation, as well as:

(a) To make insurance upon property or any valuable interest therein against loss or damage caused by fire, lightning or other electrical disturbances, earthquake, windstorms, cyclone, tornado, tempest, hail, frost, snow, ice, sleet, weather or climatic conditions, including excess or deficiency of moisture, flood, rain, or drought; a rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosion, other than the explosion of steam boilers, or the breaking of fly wheels; against loss or damage from any cause to trees, crops and farm products, and against loss or damage to property from any casualty, power to insure against which is not expressly conferred by other provisions of this charter.

(b) To make insurance against loss or damage to property and against the liability of the insured for loss or damage to the property of others caused by water entering through leaks or openings in buildings or from the breakage or leakage of sprinklers, pumps, water pipes, plumbing and all tanks, apparatus, conduits and containers designated to bring water into buildings or for its storage or utilization therein; or caused by the falling of a tank, tank platform or supports, and against loss or damage from any cause to such sprinklers, pumps, water pipes, plumbing, tanks, apparatus, conduits, or containers.

(c) To make insurance upon teams, automobiles and all vehicles, airplanes, seaplanes, dirigibles and other aircraft—

(1) Against all loss or damage to the same, their fittings and contents from any cause, including the hazards of burglary, theft or other criminal act, vandalism or malicious mischief.

(2) Against loss or damage to property, including legal liability therefor, caused by the operation, maintenance and use of the same.

(d) To make insurance against loss or damage to vessels, craft, aircraft, automobiles and vehicles of every kind (excluding automobiles operating under their own power or while in storage not incidental to transportation) as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and

respondentia interests, and all kinds of property and interests therein in respect to, pertaining to or in connection with any or all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same, or during any delays, storage, trans-shipment or re-shipment incidental thereto; including marine builders' risks, war risks; and for loss or damage to persons or property in connection with or appertaining to marine, inland marine, transit or transportation insurance including loss or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such primary insurance (but not including life insurance or surety bonds); but except as herein specified shall not mean insurances against loss by reason of bodily injury to the person.

(9) The affairs of the company shall be administered by officers of the company to be elected annually by the directors at the first meeting of the directors after the annual meeting of the stockholders, which officers shall be provided for by appropriate by-laws. If the office of any officer becomes vacant for any cause the board of directors may fill such vacancy.

(10) A majority of the directors shall be citizens of the State of Illinois, and each director shall be the owner in his own right of at least Five Hundred Dollars ($500) worth of the stock of the company at its par value.

(11) The fiscal year of the company shall commence on January first and shall terminate on December thirty-first of each year.

(12) The duration of the company shall be thirty (30) years.

In Witness Whereof the undersigned corporators have executed this declaration on this 10th day of January, A. D. 1928.

James W. Knox
Eugene M. O'Callaghan
Walter A. Freeman
Elmer J. O'Connell
C. M. Gunsteens
William H. Greasley
Frank L. Schaber
Victor E. Jorgensen
James Callahan
George W. Brown
Geo. L. Minster
John J. Deneen
Ernst A. Lawrenz
S. P. Stephany
Eugene F. Berg.

FORM 115

THE CHARTER OF GENERAL ELECTRIC COMPANY, REPRODUCED BELOW, ILLUSTRATES INCORPORATION BY SPECIAL ACT OF LEGISLATURE

CHARTER

In Effect April 15, 1892

An Act to Incorporate the General Electric Company

Chapter 323, Laws of 1892, as amended by Chapter 181, Laws of 1922, State of New York

SECTION 1. Joseph P. Ord, S. Endicott Peabody, Frank S. Hastings, James Jackson, S. Dana Green and Eugene Griffin, their associates and successors and assigns are hereby constituted a body corporate under the name of "General Electric Company," and as such, are authorized to carry on business for the following purposes, or any of them: The manufacturing, buying, selling, leasing and using of machinery, generators, motors, lamps, apparatus, devices, supplies, and articles of every kind appertaining to or in any wise connected with the production, use, distribution, regulation, control or application of electricity or electrical apparatus for the purpose of light, heat, power, locomotion, telephony, telegraphy, metallurgy, or for any other use or purpose; of constructing, acquiring, using, selling, buying or leasing any works, construction or plant, or part thereof, connected with or involving such use, distribution, regulation, control or application of electricity, or the control or use of electrical apparatus for any purpose; and of producing, furnishing and supplying electricity or electrical apparatus in any form and for any purpose whatsoever, and generally to manufacture, buy, sell, lease and use machines, engines, mechanical devices and articles of every other character, and to carry on a general manufacturing business. Of acquiring by purchase or otherwise, and of owning, using, selling, granting, assigning and licensing others to use, letters patent, patent rights, inventions, processes and contrivances relating to electrical apparatus, and the production or application of electricity for the purpose of light, heat, power, locomotion, telegraphy, telephony, metallurgy or any other purpose, or any such letters patent or patent rights, inventions, processes or contrivances which may be used or employed in connection with any such use or application of electricity or electrical apparatus; and in consideration of any such license, sale, grant or assignment, of receiving royalties, shares of the capital stock, bonds or other securities of any other

corporation, or any other consideration and of contracting therefor. Of acquiring, owning, holding, buying, selling, pledging and disposing of shares in the capital stock, and the bonds or other securities of any corporation owning, leasing, using or employing any letters patent or patent rights relating to or in any way connected with electrical apparatus or the application or use of electricity in any form, or suitable for any portion of the business of this company, and the stocks, bonds and other securities of any corporation owning, leasing, manufacturing, purchasing, using or employing any machinery, apparatus, devices, materials, or other property of any kind relating to electrical apparatus, or the use, distribution or application of electricity for any purpose, or for use in connection therewith, or necessary for the business of this company; and in respect of such shares of capital stock, of exercising all the rights, powers and privileges which a holder, being a natural person might have or exercise. Of constructing, purchasing, operating, leasing and selling for itself or others, manufactories or other properties suitable for any of the foregoing objects; of acquiring, holding, using and conveying in this state, and in any and every state, territory, district or country in which the corporation may carry on business, such real and personal estate, property, rights, privileges, consents and franchises as the purposes of the company, or the convenient transaction of its business may require; of investing the funds of the company in stock, bonds or securities of any other corporation owning any such lands or other property; and to mortgage any part of its real or personal estate with or without its franchises, to secure the payment of any debts, obligations or liabilities incurred by it in its business, as its board of directors may direct, under and pursuant, and subject to the provisions of its by-laws made in relation thereto. Said company may borrow money, incur debts and liabilities and issue its bonds or obligations therefor, to such amounts, at such rates, and on such terms as its board of directors may from time to time direct, and secure the payment of the same so above provided. Nothing in this act contained shall be construed to confer upon the corporation hereby created any authority to construct, maintain or operate any telegraph or telephone line, or lines for the use, distribution or application of electricity for any purpose in any of the streets or highways within the limits of this state, or right to use said streets or highways for any purpose whatever.

Section 2. The rights, powers and privileges herein granted to said corporation shall not be controlled, limited or restricted by any existing statute or law of this state; but so far as such statute or statutes or law are, or might otherwise be inconsistent

with the provisions of this act, or any of them, they are and shall be deemed to be altered and amended so far as they are or might be applicable to said corporation, so as to conform to the provisions of this act, which provisions shall be in lieu of all provisions in said statutes relating to the same subject-matters. Except as last above provided, and except upon subjects of matters relating to which special provision is made in this act, the said corporation shall be subject to and governed by the general provisions of the law of this state applicable thereto.

Section 3. The capital stock with which said company shall commence business shall be one hundred thousand dollars divided into one thousand shares, each of one hundred dollars. The said capital stock may be increased from time to time by the vote of the holders of two-thirds of the then existing capital stock, in person or by proxy, at a meeting of the stockholders duly called for that purpose, to such an amount as may be determined necessary for the company's business; any such meeting to be held upon a notice given to the several stockholders not less than ten days before the day of the meeting, by delivering the same personally or mailing the same, postage prepaid, to the respective stockholders at their last known residence or place of business, provided a certificate of such increase, signed and sworn to by a majority of the directors, and the president and secretary of said corporation shall be filed in the office of the secretary of state, and a duplicate thereof in the office of the clerk of the city and county of New York. Said corporation, notwithstanding any other provision of law, may issue one or more classes of preferred stock, having a par value of not less than ten dollars and not more than one hundred dollars per share, which preferred stock shall not entitle any holder thereof to vote at any meeting of stockholders or election of the company or to otherwise participate in any action taken by the corporation or stockholders except as expressly authorized at its issue by the corporation; and if so authorized, such vote shall be on the basis of one vote for each one hundred dollars of par value of preferred stock. Each share of common stock shall entitle the holder thereof to one vote at all meetings of stockholders and at all elections of the company. The capital stock of said corporation may be issued or caused to be issued by its directors, for money, labor done, or property actually received for the use and lawful purposes of such corporation, at its fair value, subject to such restrictions as may be provided in the by-laws of said company. The holders of any stock so issued shall not be subject to any liability upon the same, or by reason of being such stockholders; except that such stockholders shall

jointly and severally also be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing within thirty days after the termination of such services that he intends to hold him liable, and shall commence action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for such services. No person holding stock in said corporation as collateral security or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock shall be personally subject to liability as stockholder, and no stockholder of said corporation shall be liable for any such debt due to a laborer, servant or employee, if he shall neglect to bring suit against the corporation for such debt within three months after the termination of such services.

SECTION 4. The stock, property and affairs of said corporation shall be managed by a board of directors consisting of not less than three nor more than thirteen, as may be provided by the by-laws to be adopted by said corporation.[1] All vacancies happening in such board may be filled as may be provided in such by-laws.

SECTION 5. The persons first above named, and such other persons as shall be elected or appointed in accordance with the by-laws of said corporation shall be the first directors of said corporation, and their term of office shall continue until the first day of February, eighteen hundred and ninety-three, and until others shall be chosen in their place. On or after the first day of February, eighteen hundred and ninety-three, the board of directors of said corporation shall be elected annually at a meeting of the stockholders thereof to be held at such time and place as the corporation by its by-laws may appoint.

SECTION 6. The said board of directors appointed by and under the provisions of this act for the first year, may adopt by-laws not inconsistent with this act, or with the laws of this state for the regulation of a corporation. The said by-laws may be altered, amended or repealed by a vote of the holders of a majority of the stock, represented in person or by proxy, at any meeting of said stockholders duly called.

SECTION 7. The annual report, if any, at any time required to be filed by such corporation under the general laws of this state, or any of them, shall state:

1. The amount of its capital stock actually issued.

[1] See Chap. 320, Laws of 1903; also Sec. 35, Stock Corporation Law.

2. The amount of its debts, or an amount which they shall not exceed.

3. The amount of its assets, or an amount which its assets shall at least equal. Such report shall be signed, verified and filed in the manner and within the period required by the general laws applicable thereto. In case the directors shall fail so to file any such required report, the directors who shall have neglected or refused to make and file the same and who shall also have neglected or refused to make or file any alternative individual report, as permitted by general law, shall be jointly and severally liable, as provided by general law, and every officer and director of such corporation signing any certificate, report or public notice required by law which shall be false in any material representation, shall jointly and severally be personally liable to the creditors of the company for any damages caused to them thereby. There shall be a president, secretary and treasurer of such corporation, and such other officers as shall be provided by its by-laws. The president shall be selected by, and from, the directors. The other officers shall be elected or appointed, and have such qualifications as may be provided by the by-laws of the corporation. The directors of said corporation shall keep, or cause to be kept, at its office books of account of its business and transactions, and a book to be known as the "stock book," containing the names alphabetically arranged of all persons who are, or within two years have been stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners, and the time when the same was transferred to them respectively on the books of the company. The stock book of such corporation shall be open daily during business hours for the inspection of its stockholders and creditors who may make extracts therefrom.

Section 8. The directors of said corporation may declare and cause to be paid dividends in money or property, but only from the net profits of its business.

Section 9. The said corporation may go into liquidation, and may wind up its affairs and business, and may sell, convey and dispose of all its property upon the consent thereto of its stockholders holding two-thirds of all its capital stock, such consent to be given at a meeting of said stockholders duly held for that purpose; and the board of directors, or such other officers or persons as may be authorized and directed by a vote of its stockholders owning two-thirds of its capital stock shall be duly authorized as trustees to so dispose of the property of said corporation, and liquidate and wind up its affairs and business.

SECTION 10. The said corporation shall not commence business until it shall have paid to the treasurer of this state the sum of ten thousand dollars as a franchise tax, and it shall thereafter, from time to time, pay such further sum to the said state treasurer as shall make the aggregate sum so paid by it to the state treasurer, equal at all times to one-twentieth part of one per centum upon its existing capital stock. This act shall not be construed as granting to the corporation hereby created, the right to create or maintain any monopoly, or unlawful combination in restraint of trade.

SECTION 11. This act shall take effect immediately.

VII

STOCKHOLDERS

1. Liability of Stockholders

In practically all states stockholders are liable only to the extent of the par value of the stock held by them. When this is fully paid in money, property or services their liability ceases. States may, however, by statute or constitutional provision, increase this liability. In one state, California, there exists a constitutional provision to the effect that each stockholder is liable not merely for the unpaid part of his subscription but also for his proportionate share of corporate indebtedness incurred during the period he is a stockholder, his share being such part of such total indebtedness, as the number of shares he owns bears to the total capitalization of the corporation. Const., Art. 10, sec. 3. In Minnesota the constitution makes stockholders of all corporations, except those organized to engage in manufacturing and mechanical business, liable, in case of insolvency, to an amount in excess of the par or fixed value of the capital stock equal to such par or fixed value. Const., sec. 3, as amended 1908.

In several states stockholders are held personally liable for wages due by their corporation to servants. As a rule the courts interpret the word "servants" narrowly, including only those performing menial or manual work.

The limited liability of stockholders is an inherent right arising out of the fact of their incorporation and need not be specifically granted by constitution or statute. Statutory enactment is necessary only when it is desired to increase the liability of stockholders beyond that which is customary. "This is called statutory liability of stockholders. It rarely exists as regards stockholders in railroad corporations, but

frequently exists in the case of manufacturing and various other corporations, and nearly always exists as against stockholders in banks and trust companies." Cook, *Corporations,* Arts, 212, 213, 8th ed. Such statutory liability may be imposed by constitutional provision, statute or charter. Where the constitutional provision or statute creating such statutory liability goes into effect previous to the time of creation of the corporation there is no question as to its effect; but where the corporation was in existence at the time of such change in the constitution or statute the effect is doubtful. See Cook, *Corporations,* Art. 497, 8th ed.

In case of moneyed corporations, banks, trust companies and so on, the statutory liability is usually equal to the par value of their stock.

The liability of subscribers for the unpaid portions of their subscriptions is provided for by statute in most states, but it exists regardless of such statutory provision. In those states where provision exists in the statutes to the effect that stock may be subscribed for at less than par value, provision may also be found limiting the liability to the price agreed to be paid for the stock.

In case of no-par value stock it is customary to limit the liability of stockholders to whatever amount may be determined to be the proper price at which such stock is to be sold.

The liability of subscribers holds up to the par or fixed value of the stock even though the corporation releases them from such liability. *Randall Print. Co.* v. *Sanitas Mineral Water Co.,* 120 Minn. 268.

The constitutional and statutory provisions above discussed apply to all classes of capital stock alike unless one or more classes are exempted by a provision which can be enforced.

All provisions creating liabilities in excess of the par or fixed value of stock are contrary to the common law, hence are strictly construed. Thus all corporations are regarded as exempt therefrom which are not specified in the law.

Care should be taken in interpreting statutory provisions imposing liabilities upon stockholders additional to that created by the common law. Thus, in Colorado, the statutory liability of stockholders was placed at "double the amount of the par value of the stock owned by them, respectively." The court held this to constitute a triple liability, i. e., a double liability additional to the subscription liability. *Zang* v. *Wyant,* 25 Colo., 551. For a similar decision in Maryland see *Murphy* v. *Wheatley,* 102 Md. 501.

Creditors of a corporation may by contract waive their right to collect from stockholders debts which the corporation cannot pay. *Bush* v. *Robinson,* 95 Ky. 492.

2. National Banks

Stockholders in national banks are liable in double the par value of their stock. In addition, if at any time the capital stock is reduced through losses, the comptroller may compel the bank to discontinue business unless the stockholders submit to a sufficient assessment to make up the loss. *U. S. Rev. Stat. Art.* 5205. It is for the stockholders, not the directors, to determine whether an assessment shall be levied to make up the loss. *Comml. etc. Bk.* v. *Weinhard,* 192 U. S. 243. The double liability, however, is fixed by the comptroller of the currency and he possesses absolute authority to determine when and to what extent the stockholders' liability shall be enforced. *King* v. *Armstrong,* 50 Ohio St. 222.

3. Nature of Stockholders' Liability

Since the liability of stockholders for their unpaid subscriptions is to the corporation, corporate creditors must proceed against the corporation before they can take action against the stockholders. The corporate treasury is the primary source of funds for payment of corporate debts and its resources must first be exhausted. Thereafter it is proper to proceed against any stockholder who has not paid

his capital stock in full. There is an exception to the rule where proceedings against the company would be useless because of its hopeless condition of insolvency, or if it has been discharged in bankruptcy. *Firestone, etc. Co.* v. *Agnew,* 194 N. Y. 165. The liability of the stockholder is determined by the law of the state where the corporation is chartered, not by that of the state where the hearing is held. *Southworth* v. *Morgan,* 205 N. Y. 293.

4. Statute of Limitations

In case the creditor proceeds directly against the stockholder without first obtaining judgment against the corporation, the statute of limitations begins to run when the debt matures against the corporation. *Boyd* v. *Mut. Fire Assn.,* 116 Wis. 155. If, however, judgment must first be secured against the corporation, the statute of limitations begins to run only after it is determined what portion of the corporate debt remains unsatisfied. *Handy* v. *Draper,* 89 N. Y. 334. The statute of limitations applicable in such cases is the one applicable to any ordinary contract. Consequently suit must be brought, ordinarily, within six years from the date when the cause of action accrues.

5. Liability of Pledgees, Trustees, Etc.

In general, the person shown on the corporate books as the legal owner of stock may be held for any statutory liability thereon. He is the stockholder of record. Thus a trustee of stock whose name appears on the corporate records as a stockholder is liable thereon in the same sense as if he were the owner, even though his name is recorded on the books as that of a trustee. Moreover, under the common law, his liability is not limited to the amount of the property held in trust, although in some states it is so limited by statute. The *cestui que trust* cannot be held liable by either the corporation or its creditors, but he is liable to the trustee, being bound to repay any debts which the trustee may have

been required to pay for his benefit, unless the trustee has specifically agreed not to hold the *cestui que trust* liable.

6. Contribution Among Stockholders

Since it is not necessary that a creditor proceed against all the stockholders for the satisfaction of a debt, any stockholder thus levied on has recourse to the remaining stockholders for contribution.

7. Stockholders Liable as Partners

In addition to a stockholder's liability for unpaid assessments on his stock and possibly for certain statutory liabilities over and above this, he may, through accident, error, neglect, or otherwise, become liable as a partner. As a rule, however, parties who deal with a corporation as such are estopped from denying its corporate existence on the ground that it was not organized in accordance with all legal requirements. There may have been omissions and irregularities in incorporating and organizing the company, yet it will be regarded as a *de facto* corporation if there was a law authorizing it and if an attempt was made to follow out the requirements of this law. *Imperial Bldg. Co.* v. *Chicago, etc.*, 238 Ill. 100. "No one can question the regularity of the incorporation except the state, where the statutes allow incorporation, and the company has endeavored to incorporate and is actually acting as a corporation." *Leader Realty Co.* v. *Lakeview Land Co.*, 127 La. 1059.

Since no business can be incorporated unless there is a law authorizing the incorporation of that kind of business, those who attempt to carry on under the corporate form a business which cannot be incorporated will be held liable as partners. Likewise the members may be held liable as partners if they undertake to do things not authorized by the charter. A rifle club attempted to incorporate for "literary, scientific and charitable purposes." A man was killed by a bear kept by the club. The members were held individually

liable to his widow for damages. *Vredenburg* v. *Behan,* 33 La. Ann. 627.

8. How Transfer Affects Liability

Since shares of stock are frequently transferred from one party to another it is necessary to determine with whom any liability for unpaid assessments or for statutory liability rests. As a rule, when a transfer of stock is in good faith and is properly recorded on the books of the issuing company, the liability for uncalled assessments on the subscription price passes to the transferee. No transfer is complete until recorded in the books. This rule is frequently changed by statutory enactment to the effect that both transferor and transferee are liable. Thus under the constitution of Nebraska (Art. XII, Sec. 4) both parties are made liable, the provision being to the effect that "the original subscribers thereof shall be individually liable" and "the liability for the unpaid subscription shall follow the stock."

Where the party purchasing stock does so in ignorance of the fact that it is not fully paid up, the general rule is that he cannot be held liable for unpaid assessments. This rule may be changed by statute, however. Especially is it true that the purchaser will not be held liable if the stock certificate is marked full paid. Either the liability then remains in the transferor or it is lost. *Clark* v. *Johnson,* 245 Fed. 442.

For calls made before the stock is transferred the transferor is liable; for those made afterwards the transferee is liable, in the absence of contrary statutory provision.

Where failure to transfer the stock on the corporate books is due to the negligence of the corporation, the transferor is not liable. *Isham* v. *Buckingham,* 49 N. Y. 216.

With reference to the determination of liability of transferor and transferee, time is a factor. There are three periods to be considered in the life of a corporate debt:

1. The date the contract is made incurring the debt.
2. The date the debt becomes due.
3. The date suit is brought by creditors to collect the debt.

At which one of these dates must a stockholder be registered to be held liable? The answer to this question sometimes determines whether the transferor or the transferee will be held. The answer is sometimes found in the statutes. In Massachusetts, under a statute rendering the original stockholders, their successors, assigns and the members of the corporation liable, the court held that liability attached only to such persons as were members at the time payment was refused. *Bond* v. *Appleton,* 8 Mass. 472. The words of the statute control. In Kansas the law provides that "a *bona fide* transfer terminates the liability of the transferor either to the company or to the creditors." It was held that the liability attaches to the "persons only who are stockholders at the time the execution against the property or effects of the corporation is found to be effectual." *Van Denmark* v. *Barons,* 52 Kan. 779 (1894). To be held liable in Kansas it is not necessary that one be a stockholder at the time the debt is incurred. *R. I. etc. Co.* v. *Moulton,* 82 Fed. 979.

Where some delay occurs between the date of sale and the date of registry of the transfer on the corporate books, the transferor remains liable on his statutory liability up to the date of transfer on the corporate books. The corporate creditor, to ascertain who are the stockholders to be sued, may depend exclusively on the corporate stock records. *Magruder* v. *Colston,* 44 Md. 349.

The transferee becomes duly liable as soon as his name is entered on the stock registry of the corporation. In case of statutory liability attaching to stock, the transferee becomes liable thereon even though it existed before he bought the stock. This rule may, of course, be modified by statute.

Sometimes, to enable the stockholder to escape liability, shares in an insolvent enterprise are transferred to a person who is irresponsible financially. Such a transfer may be voided by either the creditors or the other stockholders. Complication may arise, however, when an attempt is made to prove that the stockholder knew that the concern was

failing and that the transfer was not in good faith. The transfer may be made only three weeks before the corporation goes into the receiver's hands, yet be held valid and the transferor be freed from liability. *Earle* v. *Carson,* 188 U. S. 42.

9. Assessments on Full-Paid Stock

Since contributions cannot be exacted from stockholders who have paid the par or fixed value of their stock, assessments upon full-paid stock are usually in the nature of agreements between the corporation and the stockholders. It is possible to modify this situation by passing laws making further assessments mandatory, but to do so is contrary to the theory upon which limited liability of stockholders is based.

10. Liability on Watered Stock

Watered stock arises where stock is issued without sufficient value in the assets to justify the capitalization. The most common method of creating watered stock is by issuing stock for property accepted in payment at an overvaluation. Other ways are by issuing stock as a bonus or as a dividend, in either case without sufficient value in the balance sheet to justify such issue. The courts hesitate to question property valuations unless they are grossly excessive; nevertheless there is a growing tendency to disallow them where they are evidently fraudulent. The corporation directors are responsible for the valuation placed on property received in payment for stock, and it is their duty to see that property so accepted is conservatively valued.

A transaction involving the issue of watered stock is binding on the corporation as well as on the participating stockholders, but not on dissenting stockholders. *Scovill* v. *Thayer,* 105, U. S. 143. Such a transaction is a fraud upon creditors, and should the corporation become insolvent the holders are liable to creditors up to the par value of the

stock. They are not liable, however, to those who become creditors before the stock was issued or to those who become creditors with a knowledge that the stock had been watered.

A distinction has been made between original issues of capital stock and those made to increase the capital stock, on the one hand, and those issues made to pay debts or to secure money to recoup current or accumulated losses. In the former cases the rule that purchasers of stock are liable up to the par value of such stock is strictly adhered to. In the latter, if the transaction is not secret or fraudulent, the purchasers may not be held liable for more than they pay even though less than the par value of the stock. *Clark* v. *Bever,* 139 U. S. 96. It should be noted that such issues are not intended to create a larger capital, but are emergency issues. In *Handley* v. *Stutz,* 139 U. S. 417, the court said:

> To say that a corporation may not, under the circumstances above indicated, put its stock upon the market, and sell it to the highest bidder, is practically to declare that a corporation can never increase its capital by a sale of shares, if the original stock has fallen below par. . . . It frequently happens that corporations as well as individuals, find it necessary to increase their capital in order to raise money to prosecute their business successfully, and one of the most frequent methods resorted to is that of issuing new shares of stock and putting them upon the market for the best price that can be obtained; and, so long as the transaction is bona fide, and not a mere cover for "watering" the stock, and the consideration obtained represents the actual value of such stock, the courts have shown no disposition to disturb it. Of course, no one would take stock so issued at a greater price than the original stock could be purchased for, and hence the ability to negotiate the stock and to raise the money must depend upon the fact whether the purchaser shall or shall not be called upon to respond for its par value.

In some states there is statutory provision to the effect that property or services must be exchanged for stock at their money value. In any case, however, either intentional overvaluation or actual fraud must be shown in order to hold the stockholders liable to creditors on the ground that the stock is but partly paid up. Overvaluation due to inac-

curate judgment is not sufficient. *Coit* v. *Amalgamating Co.*, 119 U. S. 343. Some decisions go so far as to maintain that fraudulent intent must be shown in any event, but this is not the usual construction.

Some of the states have passed laws prohibiting stock-watering. A frequent provision is that corporations shall not issue stock except for labor, services, money or property. Thus in Arkansas a constitutional requirement is that "no private corporation shall issue stocks or bonds except for money or property actually received or labor done, and all fictitious increase of stock or indebtedness shall be void." Similar provisions exist in California and Illinois. In interpreting such laws the attitude of the courts generally is that they are intended to prevent fraud but not to prevent the sale of stock below par value where the transaction is open and the purpose legitimate.

11. The Right to Vote

The right to vote is incidental to the ownership of corporate stock, and the stockholder cannot be deprived of this right unless there is express provision to that effect in the charter of the corporation, or unless there is some special agreement affecting his shares. It is the attitude of courts that this right to vote should be carefully protected, because it is an important property right, to be deprived of which would cause serious injury to the stockholder.

This does not mean that all stockholders possess the right to vote. If one buys stock which was issued with the provision that the owner could not exercise the right to vote, this arrangement holds. Frequently corporations, after their organization, issue stock which is deprived of the right to vote, permission to do so having been granted in the charter and a stipulation to that effect usually appearing in the stock certificate. However, once a stockholder possesses the right to vote he cannot be deprived of it, even with his own consent, by any action of the directors or stockholders. Neither can his proportionate interest be changed, for if

the stock of the corporation is increased he has the right to buy his proportionate part of the new shares. Likewise if a reduction of capital stock is to be effected his proportionate interest must be maintained.

Under the common law a stockholder possesses but one vote, regardless of the number of shares of stock he owns. Practically every state has modified this rule by enactment of statutes, whereby a stockholder is enabled to cast a vote proportionate to the number of shares he owns, the customary arrangement being to give him one vote for each share of stock owned. So long as the statutory provisions are followed, such provisions regulating voting may be placed in the charter or by-laws as are desirable, except, of course, that nothing said in the by-laws may conflict with the charter.

Although a stockholder cannot be deprived of the right to vote, even with his own consent, this does not prevent all of a given class of stockholders being deprived of this right if they consent. *Commonwealth* v. *Detwiller*, 131 Pa. St. 614. Alteration of voting rights of a given class of stockholders can be accomplished by a majority vote of the other stockholders only if they are empowered so to do by statute. *Taylor* v. *Griswold*, 14 N. J. L. 222.

12. Statutory Regulation of Voting Right

In some states special statutory provisions will be found regarding the right to vote. In Illinois at the election of directors stockholders are empowered to "vote in person or by proxy for the number of shares of stock owned by the holder for as many persons as these directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of shares of stock shall equal, or to distribute them on the same principle among as many candidates as the holder shall think fit." *Rev. Stat.*, 1927, Ch. 32, Art. 50. In Maine there exists statutory provision to the effect that the number of votes given stockholders may be indicated in the

by-laws. In any event the local statutes should be consulted to determine the voting rights and limitations to be found therein.

13. Who Exercises the Right to Vote

In general, the stockholder exercises the right to vote at meetings, providing he has complied with any special statutory requirements. Thus in Illinois he cannot vote if his stock is not full paid, or if his stock has been transferred upon the corporation books within 10 days next preceding the date of such meeting. *Rev. Stat.*, 1927, Ch. 32, Art. 47. All stockholders, both common and preferred, possess the right to vote, unless a given class has been expressly denied such right. The subject matter upon which stockholders may vote consists of everything which should fittingly be brought before stockholders' meetings, including the election of directors, the amendment of the charter, the passage of by-laws, and so on.

When stock is held in trust the trustee naturally exercises the right to vote since the stock stands in his name on the books. In doing so he must protect the interests of the beneficiary. The beneficiary may secure the right to vote by having the stock transferred to his own name, providing there are no obstacles to such transfer. *Hoppin* v. *Buffum*, 9 R. I. 513.

In some states express statutory provision will be found giving trustees the right to vote stock at all meetings.

As between pledgor and pledgee, the former retains the right to vote until the pledgee's title is perfected. *McDaniels* v. *Mfgr. Co.*, 22 Vt. 274. Ordinarily the right to vote will rest with pledgees as soon as the transfer is accomplished on the stock records. In some states, however, the pledgee may be required to give to the owner a proxy, while in other states the owner retains the right to vote if it appears on the stock records that the transferee is also a pledgee. The law of Illinois provides that "Each person who shall pledge his stock may, unless otherwise provided in the agreement of

pledge, vote as a stockholder." *Ill. Rev. Stat.*, 1927, Ch. 32, Art. 45.

A corporation which holds its own stock cannot vote it; but if it holds the stock of another corporation, it may vote it through some authorized agent. The right to vote the stock of another corporation is incidental to the ownership thereof. The law of Illinois provides that: "Corporations holding shares in another corporation may vote the same by such officer, agent or proxy as the board of directors may appoint, or as the by-laws may prescribe." *Ill. Rev. Stat.*, Ch. 32, Art. 46.

Where shares are owned jointly, unless all parties can come to an agreement, they cannot be voted at all. *Tunis* v. *R. R. Co.*, 149 Pa. St. 70.

The fact that a shareholder has a personal interest in some matter coming before a stockholders' meeting does not disqualify him from voting. He does not represent the company, but acts exclusively in his own interest.

14. Manner of Voting

The manner of voting at stockholders' meetings may be prescribed by statute, charter or by-laws. When not so prescribed, voting should be so carried on as to meet the requirements of good parliamentary practice. As a rule some provisions relative to methods of voting will be found in the by-laws. Thus the by-laws of the General Electric Company require that "the polls for the reception of votes shall remain open at least one hour. The inspectors shall receive the votes, shall canvass them immediately after the polls are closed, and shall thereupon declare the result and certify the same in writing to the Secretary of the Company."

Where statutory requirements relative to voting exist they must be followed carefully. In Illinois such requirements exist in considerable detail. Thus it is provided that "the stock ledger or transfer book shall be the only evidence as to who are the stockholders entitled to vote at any meeting of the stockholders thereof." *Ill. Rev. Stat.*, Ch. 32, Art. 44.

Also, "a majority of the capital stock outstanding represented in person or by proxy shall constitute a quorum at all stockholders' meetings." *Ill. Rev. Stat.*, Ch. 32, Art. 39.

The stock records are prima facie evidence of the right of those whose names are found therein to vote. In some states they are made conclusive evidence thereof by statute. Sometimes charter or by-law provision occurs to that effect.

15. Voting by Proxy

Under the common law a stockholder must vote in person, or not at all. Consequently voting by proxy is possible only when made so by statute, charter, or by-laws. Although there is some doubt as to the capacity of a corporation to enact by-laws thus contrary to the common law the weight of authority seems to be favorable thereto. *Detwiller* v. *Com.*, 131 Pa. St. 614. In nearly all states the matter will be found covered by statute. Voting by proxy may even arise from usage. *Re Tidewater Coal Exch.*, 280 Fed. 638. A proxy is a power of attorney given by the legal owner of stock to some other party, authorizing him to cast a vote for such stock at a meeting properly called. In *Manson* v. *Curtis*, 223 N. Y. 313, the court said: "A proxy is an authority by one, having the right to do a certain thing, to another to do it."

Where statutory provision relative to voting by proxy occurs, it may be elaborated upon in the by-laws. The by-laws of the General Electric Company provide that "at all meetings of the stockholders, absent stockholders may vote by proxy, duly authorized in writing, but no proxy shall be voted on more than eleven months after its date. Proxies need not be sealed or witnessed." The by-laws of the American Steel Foundries provide "at all meetings of the stockholders, each stockholder entitled to vote shall be entitled to vote in person or by proxy appointed by an instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting."

A proxy may be revoked at any time before the vote which it authorizes is cast, even though given in irrevocable terms, unless it has become coupled with an interest. *Woodruff* v. *R. R. Co.*, 30 Fed. 91. The giving of a proxy revokes all preceding proxies.

The action of a proxy in casting a vote becomes binding upon the owner of the stock to the same extent as if he has cast the vote in person.

Where, however, a proxy is general in character there is some question as to whether it empowers the holder to vote on matters of extraordinary importance. *McKee* v. *Howe Savings Co.*, 122 Ia. 731.

No specific form need be followed in preparing a proxy. It should, of course, be in writing and should state clearly that the necessary authority is granted to the agent expected to serve as proxy. Proxies need not be sealed. At the meeting proxies will not be rejected by the inspectors of election merely because defective in some minor details, such as omission of date, or lack of witnesses.

The General Corporation Law of New York states:

> Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.
>
> No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.
>
> Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it. Ch. 24, Art. 26.

Ordinarily proxies are intended for elections only, and do not authorize the proxies to vote on such other important matters as dissolution or the sale of the entire business; and this is probably true even though the proxy authorizes the representative to vote as fully as could the

stockholder himself were he present. *Farish* v. *Cieneguita, etc., Co.*, 12 Ariz. 235.

As to the form of proxies, Cook, *Corporations,* Art. 610, says: "A proxy should be in writing, but it need not be in any particular form; it need not be acknowledged or proved but it must be in such shape as reasonably to satisfy the inspectors of election of its genuineness and validity. And to this end the corporate officers may insist upon reasonable evidence of the regularity and genuineness of the proxy before allowing it to be voted."

In some states the duration of proxies is limited by statute —in New York eleven months unless otherwise specified in the proxy; in Pennsylvania, two months; in New Jersey, three years.

In Pennsylvania proxies must be witnessed, substitutions are not allowed, nor can the proxy vote on matters other than those specified in the proxy. *Penna. Stat.*, 1920, Arts. 5641-2.

16. Cumulative Voting

Where cumulative voting is followed a stockholder casts, for each share of stock that he holds, as many votes as there are directors to be elected. He may distribute these as he wishes. The plan is intended to secure a representative on the board for the minority interest among the stockholders. The right to employ cumulative voting does not exist under the common law, but may be granted by constitution, statute, charter or by-laws.

Under the ordinary method of voting each member casts one vote for each director to be elected. By this plan the majority interest elect the entire board and leave the minority without representation. Under cumulative voting the minority interest, by concentrating their votes, may elect one or more directors. If the minority interest represent 49% of the outstanding stock and seven directors are to be elected, they will be able to elect three men while the majority interest can elect four.

A stockholder cannot be compelled to cumulate his votes, even though cumulative voting is permitted, because if he chooses he can give one vote to each candidate, for each share of stock that he owns, which is what he would do were cumulative voting prohibited. *Schmidt* v. *Mitchell,* 101 Ky. 570.

Cumulative voting is provided for in the constitutions of several states. In others the matter is covered by statutory provision; but such provisions cannot be retroactive, i.e., they must be made to apply only to corporations chartered after they are enacted. The state may, however, make such provision effective as to the existing corporations under its reserved power to alter, amend, or repeal charters. *Looker* v. *Maynard,* 179 U. S. 46. Where cumulative voting is authorized by constitutional or statutory provision it cannot be destroyed by resolution of the board of directors. *Wright* v. *Central Cal. etc., Co.,* 67 Cal. 532. In this same case the court stated that such constitutional or statutory provision conferred "upon the individual stockholder, entitled to vote at an election, the right to cast all the votes which his stock represents, multiplied by the number of directors to be elected, for a single candidate, should he think proper to do so, . . . or by distributing them, upon the same principle, among as many candidates for directors as he shall think fit."

Under the cumulative plan an alert minority of stockholders sometimes elects a majority of the board of directors, owing to the failure of the majority interest to cumulate their votes.

There are certain votes where cumulation is impossible, as for example, a vote to adjourn.

VIII

STOCKHOLDERS' MEETINGS

1. Powers of Stockholders

In practice the powers of stockholders are few. In the large corporations the individual who holds a relatively small amount of stock is submerged. In the smaller corporations he may be more successful in making his wishes effective. In case of stockholders' meetings of large corporations it is not expected that any large proportion of the stockholders will attend in person, but that they will sign the proxies mailed to them and return them to the proper official of the company, thus in effect empowering some officers of the company to cast the ballots of all absent stockholders who are thoughtful enough to sign and return the proxies.

In theory, however, all power lies with the stockholders. This also holds in practice to the extent that the stockholders actually exercise the powers theoretically conferred upon them. Thus they elect the board of directors, and if they take an actual interest in the procedure by attending in person at the meeting, they are able to make their power felt. But, as noted, the stockholders usually delegate their powers to some corporate official and know little of the internal workings and policies of the enterprise in which they own proportionate interests.

As to the powers of stockholders, Thompson, *Corporations*, Sec. 896 (3rd ed.) says:

> Preliminary to other questions relating to stockholders' meetings, it may be proper here to consider the nature and character of the business that can be transacted by the stockholders. The statutes, perhaps, of every jurisdiction, provide for the election of directors and that such directors shall constitute the managing

board of the corporation. Thus, it will be perceived that neither in his individual capacity, nor jointly, has the stockholder anything to do in the management of the internal affairs of the corporation. It is evident, then, that the duties and powers of stockholders are limited. The first, and perhaps the most essential duty of the stockholders, is the election of directors. Corporations, as a rule, are so democratic as not only to permit but to require the election of the directors by the stockholders; and each stockholder, regardless of age, sex, or previous condition of servitude, is entitled to vote. It also rests with the stockholders to amend the corporate articles and prepare the by-laws and to increase or reduce the capital stock. Where consolidation is authorized by statute, it is for the stockholders to decide as to consolidation with other corporations. The stockholders may determine as to the dissolution of the corporation prior to the statutory time of dissolution. It generally rests with the stockholders to determine and to authorize the execution of a deed of assignment in case of insolvency. As illustrating the scope of business done at stockholders' meetings of an insurance company annual reports were read and approved; regulations as to steam threshers were passed; rates of insurance were fixed; rewards to persons for services at fires were voted; a committee to procure legislation was appointed; and receivers of interest for the company were directed to give bond. It is the business of the stockholders at their meetings to pass by-laws. A majority at a stockholders' meeting may authorize the execution of a deed of assignment, where sufficient notice has been properly given, and the minority make no objection. Stockholders have no power to elect a president of the board of directors. The proceedings at a meeting attended by all stockholders and officers were held valid, though the minutes were not recorded and signed until after such meeting.

2. First Meeting of Stockholders

In accordance with the certificate shown in Form 116, the subscribers to the articles of incorporation should notify all subscribers to the capital stock of the company of the time and place of the first stockholders' meeting. Such notification may be dispensed with only when all the subscribers to the stock are present in person or by proxy. Frequently provision to this effect is found in the state statutes. The waiver of call and notification must be signed by all sub-

scribers to the capital stock and must be entered on the records of the company possibly as part of the minutes of the first stockholders' meeting. A specified plan would be to enter the waiver in the minute book and permit all of the subscribers to sign thereon.

It is now the duty of some subscriber to call the meeting to order. First in order of business is the election of the chairman and a secretary. Next, the adoption of a code of regulations or by-laws. These, of course, must be consistent with the constitution and statutes of the state as well as with the charter. Provisions vary in the different states as to what vote of the stockholders is necessary to adopt, repeal or alter by-laws. In Ohio this may be accomplished by the assent thereto in writing of two-thirds of the stockholders or by majority of the stockholders at a meeting held for that purpose notice of which has been given personally by the acting president to each stockholder or by publication in some newspaper in general circulation in the county in which the corporation has its main office.

If such code of by-laws or regulations has not already been prepared a motion is in order at this point to appoint a committee to prepare such code. Possibly a recess may be taken at this time to enable this committee to prepare its report.

Among the things customarily provided for in the by-laws are the following:

(1) Time, place and manner of calling and conducting meetings of stockholders and directors.

(2) The number required to constitute a quorum.

(3) The time, manner of notification of method of holding the annual election for directors.

(4) Duties and compensation of officers.

(5) The manner of election or appointment and tenure of office of all offices other than directors.

With reference to these and other provisions in the by-laws the state statutes should be consulted because if anything is included contrary to such requirements such provisions will be void.

3. Adoption of By-Laws

After the committee appointed to compile the by-laws has submitted its report, it is the duty of the meeting to adopt or reject them by such vote as is necessary. If adopted they should be ordered spread upon the minutes. In some states it may be required that the written assent of the holders of a certain proportion of the capital stock be shown in the minutes following the recorded by-laws.

4. Election of Directors

Next in order is the election of the first board of directors. Directors are usually chosen by ballot, all stockholders present in person or by proxy voting. Frequently the state laws contain provisions relative to methods of electing directors. Thus cumulative voting may be provided for and it may be provided that a plurality of votes shall be necessary for a choice.

It is customary to place the work of handling the details of elections of directors in the hands of inspectors whose duty it is to certify as to what individuals are elected and perhaps to appoint the time and place for the holding of the first meeting of directors.

5. The Annual Meeting

The annual meeting of the stockholders of a corporation is an important event and various provisions relative to it are usually found in the statutes, charter, or by-laws. The annual meeting is the only "regular" meeting, any others being "special" and held only upon call made in accordance with by-law, charter, or statutory provisions.

Naturally, the date of the annual meeting should be set with reference to the close of the company's fiscal year to facilitate the review of the year's work and to enable the stockholders to take action with respect thereto as they may think necessary.

Details relative to the time and place of holding the

annual meeting, notice required, etc., are usually found in the by-laws. Thus the by-laws of American Steel Foundries provide that the annual meeting of the stockholders shall be held at the principal office of the company in the State of New Jersey, at the hour of twelve, noon, on the first Tuesday following the third Monday in March, if not a legal holiday; and if a legal holiday then on the next succeeding Thursday not a legal holiday "for the purpose of electing Directors and for the transaction of such other business as may be brought before the meeting." Further detailed provisions are found relative to notice to be given, quorum, organization, voting, and inspectors.

As to the time of the annual meeting, the by-laws are usually specific; but in case they do not specify it is a matter to be determined by the corporation. As stated, the end of the fiscal year is usually an important consideration, because reports covering the year's operations are soon thereafter forthcoming. The by-laws of the General Electric Company authorize the board of directors to fix a day "not more than forty days prior to the day of the holding of any meeting of stockholders as the day as of which stockholders entitled to notice or to vote at such meeting shall be determined," but specify no date for the annual meeting. In general, March and April are popular months for annual meetings of large corporations, whereas the smaller ones frequently hold theirs somewhat earlier.

Where there are statutory requirements these should be scrupulously observed. In Illinois the annual meeting must be held within ninety days after the end of each fiscal year of the corporation; and it is also required that a written or printed notice, stating the place, day and hour of the meeting shall be mailed by the secretary of the corporation at least ten days before such meeting. *Ill. Rev. Stat.*, 1927, Ch. 32, Sec. 39. In Massachusetts also the annual meeting of stockholders is required to be held within ninety days of the end of the company's fiscal year.

As to the place of the annual meeting, the limitation

usually found in the statutes is that it shall be held within the state of incorporation. Occasionally, however, authority is given to hold it elsewhere. Where the common law applies proceedings at stockholders' meetings are either void or voidable if such meetings are held without the state of incorporation. The better view seems to be that they are voidable. Clark *Corporations,* Art. 589. In Colorado a corporation organized under Colorado laws may hold stockholders' meetings outside the state if the charter permits, or if a meeting of stockholders held within the state authorizes such external meeting or ratifies its acts. *Col. Stat.,* Sec. 866. Similar provisions are found in the statutes of a few other states.

It has been held by the United States Supreme Court that a stockholders' meeting held in a state other than that of incorporation, at which all stockholders are present and take part, is valid as against any protesting stockholder. *Handley* v. *Stutz,* 139 U. S. 417. Morawetz says that if all stockholders consent there is no objection to holding a meeting in a foreign jurisdiction, and also suggests that in the absence of express statutory provision corporations may properly provide in their charters for meetings outside the state of incorporation. *Priv. Corp.,* Art. 488.

The statutes generally fix the place of meeting at the principal office or the principal place of business of the corporation. If the statutes permit the place of meeting to be fixed by the by-laws, the by-law provisions thereon must be followed.

A corporation has no power to perform distinctly corporate acts, such as holding a stockholders' meeting outside the state of its organization. Very generally, however, where not prevented by statute or its by-laws, the corporation may hold its meetings and transact corporate business outside of the state in which it was organized; but the corporation will ordinarily be estopped to deny the validity of acts done outside the state, to the injury of third parties, especially if all stockholders were present and took part in

person or by proxy; and if all were not present, those who were and took part are bound; but those not present and who did not take part or acquiesce in the proceedings are not bound. Thompson, *Corp.*, 3rd ed., Sec. 904.

"It is submitted, however, that the reason of this does not lie in the imaginative notion that a corporation 'must dwell in the place of its creation, and cannot emigrate to another sovereignty'; but rather in the hardship and fraud it might entail on shareholders to permit corporate meetings to be held outside the state. Accordingly there seems to be no reason for holding invalid acts done at corporate meetings without the state, if all the stockholders acquiesced in the holding of such meetings." Taylor, *Corp.*, Sec. 382.

6. Notice of Stockholders' Annual Meetings

As a rule, the time and place of the annual meeting are so specified in the charter or by-laws that the stockholders are assumed to know the facts relative thereto, and a notice is somewhat of a formality. Nevertheless it is customary to send written notice to each stockholder, regardless of the fact that the charter or by-laws are thus specific.

Requirements as to notice of meetings may be found in statutes, charter, or by-laws. In Illinois the corporation law specifies a written or printed notice giving place, day and hour of the meeting. This must be mailed at least ten days before such meeting. The by-laws of the General Electric Company, a New York corporation, require that notice of all meetings of stockholders shall be given by publication thereof at least once in each week for two successive weeks immediately preceding such meeting in a newspaper published in the County of New York, and also in the county where such meeting is to be held, if it is to be held elsewhere than in the City of New York.

The by-laws of American Steel Foundries, a New Jersey corporation, provide that notice of both annual and special meetings of stockholders shall be given by the secretary in one of the following ways:

(*a*) By publishing notice thereof once a week for four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, New Jersey; New York, New York; and Chicago, Illinois, or

(*b*) By mailing notice in a postage prepaid envelope addressed to each stockholder at the address left by him with the Secretary of the Company, or at his last known address, at least ten days previous to the time fixed for such meeting. A failure to publish or mail notice of the annual meeting or any irregularity therein shall not invalidate the proceedings of that meeting. All or any of the stockholders may waive notice of any meeting. Meetings of the stockholders may be held at any time and for any purpose, without notice, when all the stockholders are present in person or by proxy.

The by-law provision stating that failure to publish or mail notice of the annual meeting shall not invalidate proceedings thereat is a common one.

A by-law provision specifying the day but not the hour of regular meetings has been held to be insufficient notice. *San Buenaventura, etc., Mfgr.* v. *Vassault,* 50 Cal. 534.

If the statute or by-laws do not designate by whom the notice shall be signed it is probably sufficient if signed by the secretary and the treasurer. *Gentry-Futch Co.* v. *Gentry,* 106 So. 473 (Fla.)

Where officers whose duty it is to call stockholders' meetings fail to do so the remedy of stockholders is to compel the officers by mandamus to issue the call. *People* v. *Fairbury,* 51 Ill. 149. Here, however, the provisions of the statute must be considered. "As the statute is imperative, the duty of the appellants was entirely manifest and well defined, and a clear case for a peremptory mandamus is made out." *People* v. *Cummings,* 72 N. Y. 433.

Stockholders' meetings are usually called by the board of directors, but in the absence of any authority it seems that either the board of directors or the president may issue the call. *Commonwealth* v. *Smith,* 45 Pa. St. 59. In one case, however, the court held:

"Neither the articles of association nor the by-laws impose any duty nor confer any right upon the president and secre-

tary to call the meeting. That power is vested exclusively in the board of directors." *Dusenbury* v. *Looker*, 110 Mich. 58.

On this point the statutes of the state in question should be consulted for any possible provisions.

It is a settled rule that notice must be given to every person entitled to be present at the meeting. Hence, where the charter and by-laws are silent as to the time and place of general or special meetings, notice must be given. *Knoll* v. *Levert*, 66 S. 959 (La.)

The object of these rules regarding notice is to protect the rights of stockholders, particularly the minority stockholders.

Since, however, the rule is for the protection of the stockholders, they may waive it. This they may do by formal writing or informally by attending the meeting. Waiver may take the form of a failure to object to the insufficiency of the notice or to its absence. If all shareholders attend they thereby admit notice.

Essentially, a notice should state the time and place of the meeting and the business to be conducted thereat. If, by virtue of charter or by-law provision, one or more of these things is known to the stockholders, omission thereof from the notice will not be fatal to the validity of the proceedings of the meeting. Nevertheless, it is well to include it in the notice to insure that all stockholders will be fully informed.

As a general rule, notice need not be given of special business to be transacted at a regular meeting; but to this rule there are exceptions, as, for example, voting to increase the number of directors. It is always best to specify in the notice any special business to be transacted at a regular meeting.

If statutes, charter, and by-laws are silent as to the length of time before the meeting notice must be served, then a reasonable time must be allowed.

Any stockholder may waive his right to be served with notice of a meeting, either expressly or by his acts, as, for example, attending a meeting of which he was not notified.

Where a meeting is adjourned to a definite date, further notice is not required, and the same business may be considered as was intended for consideration at the first meeting. The adjournment is in itself sufficient notice. *Re Hammond,* 139 Fed. 898.

7. Preparation for Annual Meeting

Before the annual meeting can be held certain preparations must be made. The various statements which comprise the annual report must be compiled and put into form for submission to the stockholders. The stock transfer books are usually closed a given number of days before the meeting to permit the preparation of a list of names of stockholders authorized to vote thereat. All requirements of statutes, charter, and by-laws must be met relative to preparation and mailing of notices of the meeting to stockholders.

In some states it is required that an alphabetical list of stockholders entitled to vote at the annual meeting be prepared for the inspection of stockholders in attendance at the meeting. There are various advantages in this practice and it should be followed even where not required by statute. Such a list can readily be compiled from the stock records. It should give the name and address of each stockholder and the amount of stock he holds.

8. Procedure at Annual Meeting

There is no prescribed procedure for annual meetings unless the by-laws make provision therefor. Since the matter of procedure is customarily left to the corporation officials, the secretary should see that the person who acts as chairman of the meeting be supplied with a complete outline of all matters to be brought before the meeting. All such records and reports as may be needed for reference should be at hand.

"The parliamentary usages are the same as in other bodies, and mere irregularities in the manner of conducting the

business are immaterial if the sense of the meeting has been fairly expressed." Cook, *Corp.*, Art. 606, (8th ed.).

In the absence of statutory, charter or by-law provisions relative to the organization of the annual meeting the corporation may select such persons to officiate as it chooses. In doing so, however, attention should be given to their special qualifications to act in the official capacity for which they are chosen. For this reason the officers of the annual meetings are also the officers of the company, but not by virtue of the fact that they are officers of the company. It is their special qualifications that make it desirable to elect them officers of the meeting. The president of the company or the chairman of the board usually acts as chairman of the meeting. The corporation secretary usually serves as secretary of the meeting, because he is familiar with all records, papers, etc., to which reference may be made during the progress of the meeting. No other person could do this work as well as he.

The by-laws of American Steel Foundries provide that the chairman of the board, or in his absence the president of the company, shall call meetings of stockholders to order and act as chairman thereof; but in the absence of these it is provided that the board of directors may appoint any stockholder to act as chairman. It is also provided that the corporation secretary shall act as secretary at all meetings of stockholders, and, in his absence, that the presiding officer may appoint a secretary. Similar provisions occur in the by-laws of other companies.

In the absence of a presiding officer it is proper for the secretary to call the meeting to order or he may request some other person to do so, acting as chairman *pro tem.* The secretary's own duties usually make it desirable that, where he calls the meeting to order, a chairman be appointed as soon as possible to relieve him. It is always proper to appoint substitutes to act as officials *pro tem,* these giving place to the permanent officers when they arrive. Thus unnecessary delay is avoided.

9. Preliminary Transactions

The person chosen to act as chairman should be furnished with a program of the meeting's business. This is usually supplied by the secretary. The secretary also usually supplies the chairman with a list of stockholders entitled to vote. This list is open to inspection by all stockholders.

Care should be exercised to see that the meeting is called at the time specified in the by-laws and notice of meeting, or within a reasonable time thereafter. Unless this is done it may be found later on that the proceedings are void. Where a meeting was called for twelve o'clock, but was organized fifteen minutes earlier, the proceedings were held void. *People* v. *Albany, etc., R. R.*, 57 N. Y. 161.

Calling the roll is a procedure which varies somewhat with custom and the size of the company. It may be done orally by the secretary employing therefor a list of stockholders, if there are not too many stockholders to render such procedure impracticable. If the number of stockholders is large, each stockholder and proxy may be required to report his presence to the secretary, when his name is checked off on the list of stockholders. Proxies are usually required to file the original or copies of their proxies with the secretary.

10. Quorum

By a quorum is meant the number of persons necessary at a meeting to carry on business. In case of stockholders' meetings a quorum usually consists of a majority of the outstanding voting shares of stock. Unless the necessary number of shares to constitute a quorum are present the transactions of the meeting are void. Usually the by-laws or charter specify what shall constitute a quorum.

Where the number composing a body is indefinite the rule is that those who actually assemble constitute a quorum regardless of their number; but where the number constituting the body is definite, the rule is that a majority of the whole number is necessary to constitute a quorum.

"In all cases, where an act is to be done by a corporate body, or part of a corporate body, and the number is definite, it has been held that a majority of the whole number is necessary to constitute a legal meeting; and that if the actual number is reduced from any cause, the number necessary to constitute a quorum remains the same; but that, at a legal meeting, a majority of those present may act." *Lockwood* v. *Mechanics' Nat. Bk.*, 9 R. I. 308.

As to the effect on the quorum of a refusal on the part of some of the members who are present to vote, the rule is that silence or inaction on the part of some members in no way affects the count.

Under the common law the stockholders of a corporation are regarded as constituting an indefinite body, hence the rule that any number who happen to attend constitutes a quorum applies. However, this matter has now been generally settled by statute, or by by-law provision, the usual requirement being that a majority or some other definite number of shares outstanding shall constitute a quorum. Where the by-laws fail to specify as to whether the authorized or only the outstanding shares are to be considered in determining whether a quorum is present, the rule is to assume that the number of shares outstanding is to be considered.

Having completed the roll-call, the secretary determines whether or not a quorum is present. What constitutes a quorum may be prescribed in the by-laws. Usually it is made a majority of all shares of capital stock of the company entitled to vote, unless a larger number is required by law, in which event the law governs.

If a quorum is present the chairman so announces, and then proceeds to the business for which the meeting was called. If there is no quorum, the stockholders present may adjourn *sine die,* i.e., without a day appointed, in which case all business to be transacted is deferred indefinitely, or the meeting may be adjourned to some later day, providing authority therefor is given in the statutes, charter or by-laws.

The by-laws of American Steel Foundries provide that, "In the absence of a quorum, the stockholders present or represented at the time and place at which a meeting shall have been called, may adjourn the same from time to time until a quorum shall be present, and at such adjourned meeting any business may be transacted which might have been acted upon at the meeting as originally called."

If there is no provision in statute, charter, or by-laws, as to what number shall constitute a quorum, the common law rule that those present constitute a quorum, applies. *Ashcroft* v. *Hammond,* 132 N. Y. App. Div. 3.

When determining whether a quorum is present, say, when it is provided that a majority constitutes a quorum, by majority is meant a majority in interest, i.e., of the voting shares, not a majority of the holders of such shares. Likewise, in voting, the majority vote is determined by the number of shares cast for and against, not by the number of shareholders participating. Although there is authority to the contrary it seems to be settled that one person may constitute a quorum. *Morrill* v. *Little Falls, etc. Co.,* 53 Minn. 371.

In case a quorum is specified in statute, charter, or by-laws and the attendance is insufficient to constitute such a quorum, the only thing the members present can do is to adjourn, either *sine die,* or to a later date, trusting that at that time the necessary quorum may be secured.

The secretary should be prepared to submit proof that the meeting has been duly called by presenting a copy of the notice with the certification thereon of the secretary that it was sent in accordance with requirements. If publication of notice is required due proof of such publication should be in the secretary's hands in the form of copies of the paper in which the notice appeared, or possibly in the form of an affidavit from the publisher. Unless the secretary is able to show that all requirements have been fulfilled relative to notification of the meeting he may find himself embarrassed in the presence of some critical stockholder.

11. Routine Procedure

The routine procedure at stockholders' meetings may be regulated by the by-laws, but it is usually left to the discretion of the officers in charge, subject to such restrictions as may appear in the statutes or charter.

The minutes of the preceding meeting are read and then approved, either by a formal vote, or merely by the statement of the chairman that they stand approved. Before so stating, the chairman usually asks for any corrections. If there are any corrections the secretary makes notes thereof, after which the chairman declares the minutes approved as corrected; or if the chairman regards the corrections as sufficiently important to demand a vote, the minutes as corrected may be submitted to the stockholders for approval.

Sometimes the chairman in the absence of objections dispenses with the reading of the minutes, particularly if they are long or if the available time is required to consider other important matters.

It is well for those officials who have charge of a stockholders' meeting to know just what business may be transacted at both annual and special meetings. At annual or stated meetings only ordinary business of the corporation may be transacted; extraordinary or unusual matters cannot be so taken up unless the notice of the meeting so indicated. Illustrations of such extraordinary business would be a vote to increase the capital stock, or to dissolve the corporation. The latter could not be voted upon at an annual meeting, no notice of such intention having been given in the notice of the meeting, even though a statute permits the increase of the capital stock of a corporation at any meeting called for the purpose. *Jones* v. *Concord & Montreal R. Co.*, 67 N. H. 119.

At special meetings only such business may be transacted as is specified in the notice.

The provisions of state statutes, charter, and by-laws should be considered if they in any manner cover the subject

of what business may be transacted at stockholders' meetings.

12. Methods of Voting, Etc.

If the charter or by-laws prescribe how voting shall be carried on, such provisions should be observed. In the absence of restrictions, voting may be carried on (*a*) by ballot, (*b*) *viva voce,* or (*c*) by show of hands. Even though the by-laws prescribe voting by ballot, a vote taken by one of the other methods is valid if nobody objects. *Christ Church* v. *Pope,* 8 Gray (Mass.) 140.

The ballot need be in no particular form in the absence of regulations thereon. It is sufficient that it be definite enough to indicate the person for whom it is cast.

A stockholder may change his vote at any time before the result is announced. *State* v. *McGann,* 64 Mo. App. 225.

After the votes are counted and the results announced, the polls may not be reopened for reception of additional votes; but an election is not void or voidable because the polls are kept open beyond the time prescribed for closing them contained in charter, by-laws or the notice. *Rudolph* v. *Southern Beneficial League,* 23 Abb. N. C. (N. Y.) 199.

The stockholders must vote as one body. Rival factions cannot withdraw and hold separate meetings. If, however, due to the withdrawal of one faction a quorum is no longer present, the stockholders remaining cannot engage in other business than adjournment.

When a quorum is present, a majority vote thereof is sufficient to carry measures and elect directors in the absence of some provision in statute, charter, or by-laws to the contrary. It is not necessary that such majority be a majority in interest of all the stock.

A vote or resolution of the stockholders may be reconsidered at any time before rights have vested under it or as a result of its passage. *Terry* v. *Eagle Lock Co.,* 47 Conn. 141.

Directors may be elected by any method of voting not

inconsistent with statutory, charter or by-law requirements. It is customary to appoint inspectors of the election who take full charge of the work of distributing, collecting and counting the ballots. They need not be stockholders in the absence of express requirement to the contrary. The fact that an inspector or teller is a candidate for election does not render an election void or voidable, unless he acts fraudulently or illegally. *Dickson* v. *McMurray,* 28 Grant's Ch. (Can.) 533. It is better not to include among inspectors any person who is a candidate. Any requirements in the statutes, charter or by-laws relative to the form of oath prescribed for inspectors should be observed even though failure to do so may not invalidate the election. *Re Mohawk & Hudson R. Co.,* 19 Wend. (N. Y.) 135. Inspectors need not be stockholders. Some states have passed laws prohibiting candidates for office from acting as judges or inspectors of election.

After the result of an election is announced by the chairman the report is turned over to the secretary for preservation in accordance with custom or requirements of law, charter, or by-laws.

The size of the company is likely to have considerable influence on the methods and formalities pursued in electing directors. Some small companies neglect the annual elections altogether, thus permitting the directors to hold over from year to year. The large companies, on the other hand, are more likely to observe all requirements as to annual election of directors.

Unless otherwise expressly provided, a majority of votes cast is sufficient to elect directors. Any statutory or charter provisions to the contrary must, however, be observed in detail.

The fact that less than the full number of directors to be elected are elected does not invalidate the election, since the vacancies may be filled at a later election.

Where the statutes require cumulative voting such requirement should be observed.

13. Right to Vote

The stock books are deciding evidence as to who is entitled to vote at stockholders' meetings. The list of stockholders derived therefrom is usually regarded as sufficient evidence, but in case of dispute the records themselves should be referred to. The right to vote rests in the person possessing legal title to the stock, and this is the person whose name appears as owner on the books of the corporation. The inspectors of an election cannot refuse the vote to one whose name appears on the stock records as owner.

A Connecticut court states that "it has been repeatedly held by this court that the books and records of a corporation determine who are its stockholders for the time being, and who have the right to vote on the stock, although the same may have been sold or pledged as collateral security. In such cases the party who appears to be the owner by the books of the corporation has the right to be treated as a stockholder and to vote on whatever stock stands in his name." *State* v. *Ferris,* 42 Conn. 560.

The inspectors of an election must regard the company's records as final evidence as to who may vote. *In re St. Lawrence Steamboat Co., Election,* 44 N. J. L. 529.

The right to vote is frequently abridged as to one or more classes of stock. This is oftentimes true of preferred stock; but when such is the case it is not because the preference as to dividends or otherwise is applicable to such preferred stock, but to the fact that the corporation may enter into whatever contract regarding the right to vote on such stock it desires. Preferred stockholders possess the right to vote in the absence of a contract to the contrary.

Although it is possible to place certain restrictions on the right to vote by by-law provision, such provision cannot restrict the voting power as established by statute or charter, nor be in restraint of trade, nor fail to operate uniformly. It follows that by-law restrictions on voting are likely to be of questionable validity.

A corporation cannot vote its own shares, regardless of the manner of their acquisition. *Walsh* v. *State,* 199 Ala. 123. "This entire doctrine may be said to be founded on the principle that a corporation will not be permitted to acquire that which its officers may wield for the purposes of an election." Thompson, *Corp.,* Sec. 959 (3rd ed.)

14. Reports of Officers

A considerable part of the time of an annual meeting is frequently consumed in listening to and considering the reports of officers of the corporation.

First and most important is the report of the president. The customary procedure is for the stockholders to vote to accept these reports; although it is possible that they may be rejected if the stockholders are dissatisfied with them. As reports are finished they are turned over to the secretary for preservation. If the stockholders so desire they may require that reports or portions thereof be incorporated in the minutes of the meeting.

15. Election of Officers

The election of directors is considered elsewhere. The stockholders possess the power, implied or otherwise, of electing such officers as they see fit. However, by by-law provision they frequently delegate the appointment of certain officers to the board of directors. Thus the by-laws of a large corporation provide that "The officers of the Company shall be a Chairman of the Board of Directors, a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and a Comptroller, all of whom shall be elected by the Board of Directors." Furthermore, "the Board of Directors may appoint such other officers as they shall deem necessary with such powers and duties as from time to time may be prescribed by the board." Furthermore, "all officers and agents shall be subject to removal at any time by an

affirmative vote of a majority of the Board. All officers, agents and employees other than officers appointed by the Board, shall hold office at the discretion of the Board or of the officer appointing them."

In brief, the entire power of electing officers is usually in the stockholders, but it may be delegated to the board of directors by the stockholders. In the absence of express requirements, the stockholders may exercise this power whenever and in such manner as they see fit. Usually such action is more or less modified by statutory or charter provisions.

Sometimes the power to elect officers is vested in the board of directors by the charter. In such event the stockholders cannot elect the officers.

"Provisions in statutes and by-laws requiring the election of directors to be held on a specified day are regarded as directory, and the election, if not held on the regular day, may be held at a later day; and the directors then chosen, if there be no other irregularity or informality in their title, will be directors de jure." *Beardsley* v. *Johnson,* 121 N. Y. 224. In general, the inadvertent omission of a regular meeting will not invalidate acts authorized at a subsequent meeting. *Scanlan* v. *Snow,* 2 App. Cas. (D. C.) 137.

16. Unfinished Business, New Business, Adjournment

After the election of directors the meeting may take up unfinished business held over from previous meetings. Frequently one meeting assigns to a committee the work of making some investigation with instructions to report at the next annual meeting. The presiding officer calls upon the chairmen of such committees for reports of progress made, the reports of such committees as have finished their work are adopted or rejected as the stockholders see fit, while in case of committees whose work is not yet completed further instructions may be given if such is the pleasure of the meeting.

Following the consideration of unfinished business, the

attention of the meeting is turned to any new business that the secretary, chairman or any member may think fit to propose.

When all business matters have been considered and due action taken, the chairman entertains a motion to adjourn, or else in an informal way declares the meeting adjourned. If all matters have received the attention they demand and there is nothing left for consideration, the adjournment is naturally *sine die,* i. e., without a day appointed for convening again. If, however, all matters cannot be passed upon, owing to lack of time or because some committee must make further investigation, the adjournment may be to a certain future date. As a rule such an adjournment is regarded as a continuation of the meeting, so that notice is not required, although there are instances where notice of an adjourned meeting should be sent, as, for example, where the intervening period is considerable or where the things to be considered are of great importance.

In the absence of express provision to the contrary all matters relative to adjournment are governed by a majority vote of those present, and an officer cannot adjourn a meeting if any member present objects. *Chi. Macaroni Mfgr. Co.* v. *Boggiano,* 202 Ill. 312.

17. Stockholders' Special Meetings

Special or extraordinary meetings of stockholders are distinguished from regular or ordinary ones by the fact that they are not held at any stated time as provided for in the statute, charter, or by-laws, but are held at such times as conditions warrant. In general, the same rules apply to special as to regular meetings of stockholders, but they differ therefrom in certain respects, as follows:

(1) Whereas the statutory, charter, or by-law provision relative to time of holding the regular or annual meeting may be regarded as sufficient notice, in case of special meetings, notice must be sent to all stockholders, and the notice must state the object of the meeting. "The object of a call is

undoubtedly to give notice of the business which is to be transacted at the meeting." *Evans* v. *Boston Heating Co.*, 157 Mass. 37.

(2) Only such business may be transacted at such special meetings as is specified in the notice. A special meeting called to confirm or reject a resolution passed at a prior meeting cannot amend or alter its terms. *Wall* v. *London, etc. Assets Corp.*, 2 Ch. 469.

The statutes, charter, or by-laws may specify by whom special meetings must be called, but in the absence of such provision it has been held that the general agent of the corporation may make the call. *Stebbins* v. *Merritt*, 64 Mass. 27. In such circumstances it appears that the board of directors may always call a meeting of stockholders. *Cassell* v. *Lexington etc. Co.*, 9 S. W. 502, 701 (Ky.)

Where statutory, charter or by-law provision occurs relative to how special meetings shall be called they should be carefully observed; although they may be waived by unanimous consent of the stockholders. Thus where the charter prescribed that the commissioners who received the subscriptions should call the first meeting by publishing a notice, it was held that this call could be waived and that the stockholders could meet and organize without a call, if all assented. *Judah* v. *Am. etc. Co.*, 4 Ind. 333.

If the law merely requires that due notice be given, it need not be given by any particular party or in any particular form.

Statutory, charter, or by-law provisions relative to calling of meetings may be either directory or peremptory. Directory provisions state how a call may be made; peremptory provisions state how it must be made.

By-law provisions for calling special meetings of stockholders are found to prescribe such methods as the following:

1. By the board of directors, which naturally takes the form of a resolution.
2. By the board of directors or by a majority of the members thereof, or by the president.

3. By the president or by the board of directors or the executive committee by vote at a meeting, or by a majority of the directors or a majority of the members of the executive committee in writing without a meeting.
4. By order of the board of directors, or upon the written request therefor of stockholders holding forty per centum of the then issued stock of the company, filed with the secretary.

The rule that no business may be transacted at special meetings except such as is specified in the call is so strictly enforced that not even minutes of previous meetings may be read and adopted thereat unless the intention to do so is stated in the call.

Officers whose duty it is to call a meeting but who refuse to do so may, at the instance of a stockholder, be compelled by mandamus to do so. *People* v. *Cummings,* 72 N. Y. 433. This applies to special as well as regular meetings. *Bassett* v. *Atwater,* 65 Conn. 355.

18. Notice of Special Meeting

It is the secretary's duty, upon being duly notified of the call, to prepare the notices and send them to the stockholders. In doing so he must be careful to observe all requirements of statutes, charter and by-laws relative to the length of time such notices must be mailed before the meeting. Also, if there are any requirements as to publication these should be complied with. In preparing the notice, strict adherence to the terms of the call is necessary, since the call is the authority upon which the secretary proceeds.

In sending out the notices the secretary usually uses the addresses of the stockholders shown in the stock ledger, but there may be statutory requirements as to this procedure. Thus in New York the statute specifies that the address of stockholders as shown in the stock ledger shall be used unless the stockholder has filed with the corporation secretary a written notice of some other address to be used. *Stock Corp. Law,* Sec. 45.

It is a common law tenet that personal notice must be served on stockholders, and this holds unless there exists in the statutes, charter or by-laws some provision permitting service of notice by mail or publication or both.

The three essential elements of a notice of meeting are time, place and business to be done. Consequently the notice must specify all these, unless one or more are known by virtue of some statutory, charter or by-law provision. In case of regular meetings, the time and place are usually specified in the by-laws, but not necessarily. In case of special meetings the place may be specified, but the time and the business to be transacted are necessarily left for circumstances in each instance to decide.

The notice should state the precise hour at which the meeting is to be held, and if only the day of the meeting is specified but not the hour, the notice is insufficient. *San Buenaventura, etc., Co.* v. *Vassault,* 50 Cal. 534.

Where business is transacted which was not mentioned in the notice, the entire proceedings of the meetings are not invalidated, but only those proceedings which the notice did not include.

The principles governing notification have been stated thus, "The law, intending to protect the rights of minorities, requires that notice of the meetings of the stockholders of a corporation shall be given to every person who holds shares of the stock, and, if no other mode of notification be provided in the charter or by-laws of a company or by statute, express notice must be given. The owner of every unit of interest constituting a part of the aggregate body of stock is entitled to the opportunity which due notice affords him of protecting it by being present and participating in meetings." *Benbow* v. *Cook,* 115 N. Car. 324.

19. Service of Notice of Special Meetings

The manner and form of service of notice may be prescribed by statute, charter, or by-laws, in which event such requirements should be rigidly observed, unless there is

waiver of notice by unanimous consent. If such requirements as to service of notice are not observed the proceedings of the meeting will be invalid. This occurred in *Shelby R. R.* v. *Louisville, etc. R. R.*, 12 Bush (Ky.) 62, in which requirements as to publication were not met.

Sometimes the statute requires that notice be given a certain number of days before the meeting. This is usually held to mean that the full number of days specified must be allowed.

Illustrative of statutory requirements is that of New York, found in Sec. 3, Art. 5, of the Stock Corporation Law, as follows:

> Whenever under the provisions of this chapter stockholders are required or authorized to take any action at a meeting, the notice of the meeting shall be in writing and signed by the president or a vice-president or the secretary or an assistant secretary. Such notice shall state the purpose or purposes for which the meeting is called and the time when and the place within the state where it is to be held, and a copy thereof shall be served, either personally or by mail, upon each stockholder of record entitled to vote at such meeting, not less than ten nor more than forty days before the meeting. If mailed, it shall be directed to a stockholder at his address as it appears on the stockbook unless he shall have filed with the secretary of the corporation a written request that notices intended for him be mailed to some other address, in which case it shall be mailed to the address designated in such request. The by-laws may require that such notice be also published in one or more newspapers.

In case the time of notice is not specified it must be served a reasonable length of time before the meeting.

20. Waiver of Notice

Any stockholder may waive notice, either expressly or by his actions. All the stockholders may waive notice, in which case a meeting may be held at once, and the acts performed thereat will be valid. *Handley* v. *Stutz*, 139 U. S. 417. There is some danger, however, in proceeding by such informal methods, for if at such a meeting one or two stockholders

should protest or withdraw the entire proceedings might be invalidated.

Sometimes call and waiver are combined. The signatures of all the stockholders are necessary, but if secured the meeting may be held at any time, and such business as is indicated in the notice may be transacted. Obviously, such procedure is practicable only in case of small or closely owned companies.

Statutory requirements as to publication of notice are not a bar to a waiver of notice. If the stockholders waive the publication requirement as to notice the meeting will be a valid one. *State* v. *Cook,* 178 Mo. 189.

In case there is any question as to regularity and validity the burden of proof, to show that it was irregular, is upon the party who alleges the irregularity. The meeting is assumed to have been properly called until the contrary is proved.

21. Proceedings at Special Meetings

The formalities of roll call, proof of call and notice of the meeting, and so on, are practically the same as in case of annual meetings. If it is customary to have at hand for convenience of those participating in annual meetings a list of shareholders, the same will probably be done at special meetings. If the meeting is by call and waiver, the secretary should preserve the signatures of all members as proof that all participated in such waiver.

22. Adjournment

As in case of annual meetings, adjournment of special meetings may be *sine die,* or they may be to a later date. However, when a special meeting is adjourned to a later date no business other than that specified in the notice of the first meeting may be transacted thereat. No notice of an adjourned meeting is required, unless it is desired to transact thereat some business not specified in the notice of the

original meeting. If, however, a considerable period of time intervenes between the date of the first meeting and that of the adjourned meeting, notice should be given even though no business other than that indicated in the notice of the first meeting is to be transacted.

An adjourned meeting must not be held so as to prevent certain stockholders from attending. To do so would invalidate the proceedings. *Western Cottage Piano, etc. Co.* v. *Burrows,* 144 Ill. App. 350.

23. Stockholders' Resolutions

For a general discussion of resolutions the reader is referred to the consideration of directors' resolutions found elsewhere in this volume. As there stated, stockholders' resolutions are distinguished from directors' resolutions chiefly in that the former are somewhat of the nature of by-laws and deal, as a rule, with matters of more fundamental importance and greater permanence. A few of the stockholders' resolutions are likely to be made previous to incorporation, such as that authorizing a committee to prepare the application for a charter and that by which the charter is accepted. The following resolution is such as would be used to authorize the preparation of an application for a charter:

Resolved, That a committee of three, as follows:

1. .....
2. .....
3. .....

be authorized to prepare at once an application for a charter, setting forth therein all of the particulars required by the laws and regulations of the State of.....

Resolved, further, that the same be submitted to the proper state official for examination and approval and be recorded and filed in such manner as is provided for in the laws and regulations of the State of.....

The following is representative of the form of resolution required to accept the certificate of incorporation:

Resolved, that the Certificate of Incorporation be and is hereby accepted and that preparations be begun forthwith to engage in business thereunder.

Resolved, further, that the Certificate of Incorporation be spread upon the minutes.

(Here should be written, or typewritten, or otherwise inserted, a complete copy of the Certificate of Incorporation, together with the acknowledgments of the incorporators, and the endorsement of the Secretary of State.)

The following is a resolution for the adoption of by-laws:

Resolved, that the by-laws submitted by the committee appointed to prepare same be and are hereby approved as to all articles and provisions thereof, and

Resolved, further, that the by-laws be spread upon the minutes.

(Here should be written, or typewritten, or otherwise inserted, a complete copy of the by-laws as adopted.)

Other resolutions of stockholders cover such matters as: election of directors, authorizing amendment of the charter, issuance of additional capital stock not in excess of the limit prescribed in the charter, authorizing the acceptance of stock subscriptions, authorizing the acquisition of properties of other companies increasing or reducing the authorized capital stock, amending the by-laws, changing the name of the corporation, authorizing the issuance of bonds, authorizing voting by proxy, dissolving the corporation, and so on.

No absolute rule can be laid down by which can be determined what matters are subjects for stockholders' resolutions and what ones are subjects for directors' resolutions. The requirements of statutes, charter and by-laws as well as the specific problems involved in any given situation must be taken into consideration in arriving at the answer to this question. In the majority of cases, however, there can be no doubt, since all matters of routine management as well as most contracts are subject matter for the directors' consideration. Matters which ordinarily fall within the jurisdiction of the directors but which are of such importance as to demand special consideration may be submitted to the stockholders at the discretion of the board of directors.

24. Minute Book, or Record of Proceedings

The necessity of an adequate record of all proceedings of meetings of both stockholders and directors is so great that no company should fail to keep a carefully prepared minute book. Sometimes the records of stockholders' and directors' meetings are kept in separate books, especially if the company is a large one, necessitating voluminous minutes; but a more usual plan is to use one book. The first page of such a book should be given a significant title, as "Minutes of Meetings of the Stockholders and Directors of The..... Corporation," or "Records of Proceedings of the Incorporators, Stockholders and Directors of The..... Corporation."

Below this title an entry should be made essentially as follows:

On the.....day of....., 19..., ...and ....., the individuals named below as subscribers to the articles of incorporation desiring for themselves, their associates, successors and assigns to become a body corporate in accordance with the general corporation laws of the State of..... under the name....., and with all the corporate rights, powers, privileges and liabilities enjoyed under or imposed by such laws, did subscribe and acknowledge, as required by law, articles of incorporation as follows to wit:

(Here insert a copy of the articles in full together with the certificates of acknowledgment and such other certificates as the laws of the state in question provide should be a part of the articles of incorporation.)

The above articles of incorporation together with the certificate of acknowledgment (together with any other required certificates) were on the.....day of....., 19..., duly filed in the office of the Secretary of State at....., in the said State, and by him recorded as a certified copy thereof by him furnished to said subscribers.

Within a reasonable time after filing the articles of incorporation in the office of the Secretary of State the incorporators must meet and fix the time and place for opening the subscription books, doing same by passing a

resolution and fixing the time and place for such opening of the subscription records. In doing this any requirements of the State laws should be observed. Usually all such requirements may be waived by securing the signatures of all the incorporators to that effect. The form of such a procedure of the incorporators, as suggested in the official forms issued by the Secretary of State of the State of Ohio, is as follows:

On this.....day of....., 19..., all the incorporators of (name of corporation) met at (name of the place of meeting), to order the opening of books of subscription to the capital stock of said (name of corporation) to fix the time (or times) and place (or places) for such opening and to waive the notice of such opening required to be given by law; and having agreed upon such time (or times) and place (or places), the following order for, and waiver of notice of, the opening of such books of subscription, was made in writing by all the subscribers to the articles of incorporation of said corporation:

The.....(name of the corporation) order for, and waiver of notice of the opening of books of subscription.

....., Ohio, ..., 19....

The undersigned, being ("all," or a "majority,") of the subscribers to the articles of incorporation of The..... Company, do hereby order that books be opened for subscriptions to the capital stock of said company, at..... in the ..... of.....County, Ohio, on the.....day of ....., 19..., at.....o'clock, ...M; and we hereby in writing ("waive" or "order") the notice by publication of the time and place of such opening of books of subscription, required by law.

.....
.....
.....
Incorporators.

The above waiver and resolution of the incorporators should appear in the minute book immediately following the articles of incorporation. Thereafter all proceedings of stockholders and directors should follow in order of occurrence of the meetings. It is customary also to include in the minute book a copy of the by-laws adopted by the stockholders. This should appear immediately following the resolution of adoption of such by-laws.

25. Stockholders' Meeting Illustrated

An illustration of the tense interest that is sometimes aroused in the election of corporation officers is found in the meeting of the Standard Oil Company of Indiana held at Whiting, Indiana, March 1, 1928. Not long before this date Colonel Stewart, chairman of the board, had refused to inform a senate investigating committee at Washington as to the disposition of certain bonds of the Continental Trading Company, which had played an important part in the famous Teapot Dome oil scandal. John D. Rockefeller, Jr., stated to the same committee that he disapproved of Mr. Stewart's attitude. Colonel Stewart was placed under arrest and it was not clear whether he or the Standard Oil Company of Indiana was involved in the scandal. The following is quoted from the *Chicago Journal of Commerce* for March 2, 1928:

The annual meeting at Whiting, Indiana, yesterday marked the great moment. Colonel Stewart, known for his constant smile and jocular manner, opened the meeting of stockholders with a grim expression and sticking strictly to formality and technicalities. The various legal resolutions were asked and passed, a review of operating results was read, and then it was stated that the election of directors would be the next business.

Colonel Stewart, towering above all in the room, still carrying that grim expression, arose for the first time. "It is usual," he said in a low precise voice, "for the president of this company to preside at stockholders' meetings when the chairman of the board is not present. In order that my presence will give no embarrassment to any stockholder or to myself, I will absent myself from the room and Mr. Seubert, the president, will take over this meeting. I will be in an adjoining room and available when sent for."

E. G. Seubert then called for nominations for directors. The nine directors who served for the last year were formally nominated for re-election by a stockholder. Mr. Seubert arose and said that he wished to read a communication before the ballot was cast. Stockholders jerked upright and there was general recognition that the moment had arrived for the climax. The letter was the final word from the Rockefellers as to how they felt as to Colonel Stewart.

It follows in full:

"Feb. 27, 1928, DEAR MR. SEUBERT:

"Some time ago proxies in the official form, covering my holdings of stock in the Standard Oil Company of Indiana, were forwarded to Colonel Stewart, you and Mr. Graham as the proxy committee. This stock stands in the following names and I am enclosing herewith my formal instructions, and formal instructions from each of the other record holders, to vote it in accordance with this letter:

H. P. Fish	137,900
A. H. Bates	130,000
Robert W. Gumbel	130,000
Butler, Herrick & Marshall	4,240
John D. Rockefeller, Jr.	140
	402,280

"I am not prepared at this time to vote either for or against Colonel Stewart's re-election as a member of the board. I wish, therefore, to have the proxy committee vote my stock for the re-election of all of the present members except Colonel Stewart.

"That my position may be understood, I shall be glad to have this letter read at the annual meeting before the election of directors.

"Very truly,
"JOHN D. ROCKEFELLER, JR.

(P. S.) "The finance committee of The Rockefeller Foundation has directed the assistant treasurer of the Foundation to issue to your proxy committee similar instructions as to the voting of the Foundation's stock."

This represented explicitly the Rockefeller attitude, but the subsequent vote was a complete victory for Colonel Stewart. Of a total of 9,234,000 shares of stock entitled to vote at the meeting 6,320,275 were represented in person or by proxy, the highest percentage of stock voted at a Standard Oil meeting in years. Of the stock voted, 6,320,275 shares were voted for the eight directors other than Colonel Stewart, and he received 4,980,355 shares, with no other name in nomination to oppose him, no voice lifted against his re-election.

After the meeting Colonel Stewart said: "I feel highly gratified that there was no dissent to my re-election. It moved me greatly."

There are two vacancies on the directorate, but these were not filled, although the board was authorized to make appointments if they deemed it necessary before the next annual meeting.

All Officers Re-elected

At the subsequent meeting of the board, Colonel Stewart was re-elected chairman of the board and all other officers were likewise re-elected. It was learned that the Rockefeller Foundation holds approximately 460,000 shares, so that there was a total of roundly 863,000 shares directly indicated as not voting either way on Colonel Stewart. However, there was a total of 1,339,920 shares voted for the eight other directors, and not for Colonel Stewart, leaving about 476,920 shares unaccounted for. It is presumed that this represented holdings of other Rockefeller affiliations, who adopted a similar course, but whose policy was not publicly announced.

26. Forms Used in Connection with Stockholders' Meetings

The following forms are such as are commonly employed in connection with stockholders' meetings.

Form 116

Notice of Meeting to Organize Corporation

To.....

We hereby notify you that a certificate of incorporation has been issued by the Secretary of State of the State of....., under date of....., creating The..... Company, a corporation.

You are hereby notified that the first meeting of the stockholders of said corporation will be held at No....., ... Street, ..., at.....o'clock, ...M., on the..... day of....., 19.... The purpose of such meeting shall be to adopt by-laws and transact any other business which may properly come before the meeting.

Dated....., 19....

.....

.....

.....

Incorporators

Form 117

Waiver of Notice of First Meeting of Stockholders

We, the undersigned, being all the persons named as incorporators in the charter of The.....Company, a corporation organized under the laws of the State of....., do hereby waive notice of the time, place and purpose of the first meeting of the incorporators of said Company as provided by the statute of the State of....., and we hereby fix the.....day of....., 19..., at ...M., as the time and.....as the place of said meeting, and we consent that all or any matters which concern the interests of this corporation and which fall within the authority of the stockholders may be considered and acted upon at such meeting.

.....

Dated....., 19... .....

.....

Signatures of all Stockholders

Form 118

Proposal to Exchange Property for Stock

(This form of letter will be found of use where a corporation is organized to take over the assets of an existing business. It should be read at the first stockholders' meeting.)

To the.....Company

.....

Gentlemen:

I hereby offer to sell and transfer to you in exchange for ..... Dollars of your capital stock to be issued to me fully paid and nonassessable, the business now conducted by me at.....

.....

for the manufacture and sale of.....

.....

.....

consisting of the plant, stock on hand, all processes of manufacture, tools, equipment, machinery of every description, raw material, leases, accounts due and bills receivable, patents, patent applications, trade-marks, secret processes and the good will of the business, the whole being sold as a going concern, all of said property being free and unencumbered.

If this offer is accepted I will deliver to your Company proper deeds and assignments of the above mentioned property and rights upon your delivery to me of a Certificate of stock representing the above named sum.

Yours very truly,

.....

Dated....., 19....

Form 119

Authentication of Record Book and Records

We, the undersigned, being and constituting, in part, all of the Incorporators of the

a corporation duly organized and existing under and by virtue of the laws of the State of Illinois and by virtue of a Certificate of Incorporation issued by the Secretary of State of the State of Illinois, under the Great Seal of the State of Illinois, on the..... day of....., A. D. 19..., and being and constituting, in part, all of the initial Directors of the said corporation, for the purpose of the adoption and of the identification of this book, together with the records therein contained, as the Book of Records of the said corporation and as the original Record of the organization thereof, respectively, have hereunto subscribed our respective names and have caused the corporate seal of the said corporation to be hereto affixed, in the City of....., in the County of....., in the State of Illinois, on this.....day of....., A. D. 19....

.....(Seal)	.....(Seal)
.....(Seal)	.....(Seal)
.....(Seal)	.....(Seal)
.....(Seal)	.....(Seal)

(Corporate Seal)

Form 120

Stockholder's Resolution Directing Purchase of Property

Whereas, an offer has been received by the Board of Directors of this Company to sell to this Company the manufacturing business of The.....Company, including all assets there-

of, both tangible and intangible, for the sum of..... Dollars ($.....) to be paid in capital stock of this Corporation taken at its par value as specified in the proposal dated ....., 19...,

Resolved, that in the opinion of the stockholders of this Corporation said property is necessary for the expansion of its business and that it has a fair value of.....Dollars ($.....),

Resolved, that the Board of Directors of this Company do and are hereby authorized to purchase said property in accordance with the terms of said offer and to issue in payment thereof full paid and non-assessable stock of this Company to the amount of .....Dollars ($.....), if in their discretion they deem it wise to make such purchase.

Form 121

Stockholder's Resolution Accepting Property

Whereas, the Board of Directors of this corporation voted on the.....day of....., 19.., to purchase all the property of The.....Company located at....., and to issue in payment thereof, full paid and non-assessable stock of this Company to the amount of Fifty Thousand Dollars ($50,000.00).

Resolved, that such action of the Board of Directors of this corporation be and is hereby ratified and approved.

Form 122

Minutes of First Meeting of Stockholders of.....

The first meeting of the stockholders of.....was held on the.....day of....., 19..., at .....o'clock,....M. at the office of the Company, Number....., ...Street in the city of....., State of.....

Pursuant to a written call issued.....all of the stockholders of the Company were in attendance except such as were represented by proxy. The names of the stockholders present were as follows:

Name	Number of Shares
.....	.....
.....	.....
.....	.....

The names of the stockholders present by proxy were as follows:

Name	Name of Proxy	No. of Shares
.....	.....	.....
.....	.....	.....
.....	.....	.....

On motion duly made and seconded, Mr. .....was elected Chairman of the meeting and Mr.....was elected Secretary of the meeting. By the unanimous consent of all outstanding shares of stock the reading of the formal notice calling the meeting was dispensed with. Also by the unanimous consent of all outstanding shares the meeting was declared to be regularly called.

The Chairman reported that the application for charter had been filed in the office of the Secretary of State of the State of .....on the.....day of....., 19... at ..... o'clock at ...M, and that all other steps had been taken to constitute the Company a duly organized corporation.

The subscription lists were presented by the Secretary and upon motion duly made and seconded, were approved and accepted.

The by-laws for the regulation of the internal affairs of the Company were read and considered article by article. Each article was, upon motion duly made and seconded, adopted by the unanimous vote of all outstanding shares. Upon motion, duly made and seconded, the meeting next proceeded with the election of a Board of Directors for the first year. The following subscribers to the capital stock of the Company were elected directors:

Name	Number of Votes
.....	.....
.....	.....
.....	.....

The procedure in the election of directors was by ballot, Messrs. .....and.....having been appointed inspectors to supervise the taking of the ballot.

Upon motion, duly made and seconded, the Board of Directors were authorized to issue such amount of the capital stock of this Corporation as from time to time may be thought necessary by them, provided only that they do not exceed the total authorized issue. They were furthermore, authorized to accept in payment therefor, money, labor or property of any kind which, in their judgment, might suitably serve the purpose of the Company.

A tentative agreement for the purchase by this Company of

certain properties was presented as follows: (Here insert or reproduce copy of agreement.)

With reference to this agreement the following resolution was made and seconded and unanimously adopted:

Resolved, that a tentative agreement for the purchase of certain properties as shown above be accepted by this Corporation and,

Resolved, furthermore, that the Board of Directors of this Corporation be and are hereby authorized to execute said agreement in the name of this Company and to issue in payment for said properties described in said agreement, capital stock of this Company to the amount of.....Dollars ($.....) as provided in said agreement. On motion, duly made and seconded the meeting adjourned until.....o'clock....., 19....

FORM 123

MINUTES OF ADJOURNED MEETING OF STOCKHOLDERS

In accordance with the motion duly made and seconded at the meeting of the stockholders of this Corporation, held on the..... day of....., 19... this adjourned meeting of the stockholders of said Company was called at the office of the Company at.....o'clock...M. at.....in the city of....., State of.....

Mr....., President, acted as Chairman, and Mr.....acted as Secretary of the meeting.

On motion, duly made and seconded, the minutes of the directors' meeting held on the.....day of....., 19...., at.....o'clock....M., were read and approved. On motion, duly made and seconded, the resolution of the Board of Directors authorizing the President of the Company to purchase property in accordance with the following agreement was ratified and approved:

(Here insert a copy of the agreement.)

On motion, duly made and seconded the meeting was declared adjourned.

.....

Secretary.

The form of stockholders' minutes suggested by the Secretary of State of the State of Ohio, is reproduced as follows:

FORM 124

MINUTES OF FIRST STOCKHOLDERS' MEETING
(ANOTHER FORM)

.....
....., 19...

Pursuant to formal notice given by the subscribers to the articles of incorporation of (name of corporation) to the subscribers to the capital stock of said corporation to meet at (name of the place of meeting), on the.....day of....., 19...., at.....o'clock, ...M., for the purpose of electing the first board of directors of said corporation, and of transacting such other business as might come before said meeting; all of the subscribers of the capital stock aforesaid met at the time and place above named, and thereupon, in person or by proxy, did all execute a waiver of notice of the first stockholders' meeting of said corporation, which waiver appears here upon this record of proceedings of said corporation in the words and figures following:

The.....(name of the corporation.)

WAIVER OF NOTICE OF FIRST STOCKHOLDERS' MEETING

We, the undersigned, being all of the subscribers to the capital stock of The.....Company, and being all this day at.....o'clock ...M., present, in person or by proxy, as appears below, at the first stockholders' meeting of said Company to elect directors, held at..... in the....., of.....County, Ohio, do hereby waive the notice of such meeting required by law:

Names of Stockholders	Names of Proxies	No. of Shares
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

John Jones was chosen chairman and William Smith secretary, of said meeting.

On motion of David Brown it was resolved that the chairman appoint a committee of three to prepare a code of regulations for the government of this corporation.

The chairman appointed David Brown, Samuel Miller and Robert Allen as such committee.

A recess was then taken until.....o'clock, ...M.

At.....o'clock, ...M., the meeting reconvened, and the committee on regulations, being called upon by the chairman for its report, reported and recommended the adoption of the following code or regulations:

(Here set out the proposed code of regulations.)

On motion of James Wilson, 300 shares (the entire capital stock of the corporation) being cast in the affirmative, and no shares of the stock being cast in the negative, it was resolved that the code of regulations heretofore set forth be adopted as the code of regulations governing this corporation, and that the written assent of the stockholders favoring the adoption of such resolutions be recorded in the minutes of this meeting.

Thereupon the following written assent to the adoption of the code of regulations aforesaid was entered in these minutes and subscribed by all (in Ohio the holders of at least two-thirds of the stock must subscribe such assent in order to make it effective) of the stockholders of this corporation:

.....

....., 19...

We, the undersigned, being the owners of the number of shares of the capital stock of (name of corporation) set opposite our respective names, do hereby assent, in writing, to the adoption of the code of regulations hereinbefore set forth for the government of this corporation.

Name	Number of Shares
.....	.....
.....	.....
.....	.....

The code of regulations having been thus adopted, the chairman declared the election of a board of directors to be the next thing in order.

On motion of Peter White it was resolved that the board of directors of this corporation consist of five directors. In Ohio a corporation must have not less than five nor more than fifteen directors, which number should be fixed by motion as herein set forth.

An election for directors was then held.

The names of John Jones, William Smith, David Brown, Samuel Miller, Robert Allen, James Wilson and Peter White were placed in nomination as candidates for the office of directors.

James Wilson and Peter White withdrew their names.

No other names being proposed, a ballot was then had.

James Wilson and Peter White, being the only two subscribers to the articles of incorporation of this corporation present, were requested by the chairman to act in the capacity of inspectors of the election.

Said election having been had, the following entry was here made upon this record of proceedings by said inspectors, certifying the result of said election, and appointing a time and place for the holding of the directors' first meeting.

.....

....., 19...

We, the undersigned, being the only subscribers to the articles of incorporation of (name of the corporation) present at the first meeting of the stockholders of said corporation, held at (place of meeting), on (time of meeting), do hereby certify, that at an election for directors held at such meeting, and at which we acted as inspectors of such election, three hundred shares of the capital stock of said corporation were cast in favor of the election of John Jones, William Smith, David Brown, Samuel Miller and Robert Allen, as directors for said corporation and no votes were cast in favor of the election of any other person. And we do further certify, that at said election, the said John Jones, William Smith, David Brown, Samuel Miller and Robert Allen were each duly elected to the office of director of said corporation, to hold their said offices until the next annual election of directors held by the stockholders of said corporation, or until their successors are elected and qualified; and we do hereby appoint....., the.....day of....., 19..., at..... o'clock...M., as the time, and.....(place of meeting) as the place for the holding of the first meeting of said directors.

James Wilson
Peter White

There being no further business before the meeting, on motion of Robert Allen the same adjourned.

John Jones, *Chairman*

Attest:

William Smith, *Secretary.*

FORM 125

NOTICE OF STOCKHOLDERS' ANNUAL MEETING

The.....annual meeting of the stockholders of the.....Company will be held..... ;, ..., on.....the.....day of ....., 19..., at.....o'clock, ...M., for the election of three directors to hold office for a period of three years and for the transaction of such other business as may properly come before the meeting, including various transactions and contracts entered into by the executive committee since the last annual meeting of the stockholders.

The stock transfer books will be closed from the close of business on....., the.....day of....., 19...., and will be reopened at.....o'clock on the morning of....., 19....

.....
Secretary

FORM 126

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
(ANOTHER FORM)

CHICAGO, NORTH SHORE AND MILWAUKEE RAILROAD COMPANY
Edison Building—72 West Adams Street, Chicago

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

February 2, 1928.

The Annual Meeting of the stockholders of the Chicago, North Shore and Milwaukee Railroad Company will be held in room 1741 Edison Building, 72 West Adams Street, Chicago, Illinois, on Monday, March 5, 1928, at 10 o'clock, A. M., for the purpose of electing Directors and for the transaction of such other business as may properly come before the meeting.

All stockholders are requested to be present at said meeting in person or represented by proxy.

LINCOLN C. TORREY,
Secretary.

FORM 127

NOTICE OF STOCKHOLDERS' ANNUAL MEETING
(ANOTHER FORM)

ANNUAL MEETING OF STOCKHOLDERS COMMONWEALTH EDISON COMPANY

The stockholders of the Commonwealth Edison Company are hereby notified that the regular annual meeting of the stockholders of said Company will be held in Customers' Hall, on the Second Floor of the Edison Building, 72 West Adams Street, in the City of Chicago, Illinois, on Monday, the 27th day of February, 1928, at 5:00 o'clock, P. M., for the purpose of electing a Board of Directors and of transacting such other business as may be properly brought before such meeting.

JOHN W. EVERS, JR.
Secretary

FORM 128

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
(ANOTHER FORM)

UNITED STATES STEEL CORPORATION

NOTICE OF ANNUAL MEETING OF APRIL 16, 1928

Notice is hereby given that the Annual Meeting of the Stockholders of the United States Steel Corporation will be held at the principal office of the Corporation, Hudson Trust Company Building, No. 51 Newark Street, in the City of Hoboken, County of Hudson and State of New Jersey, on Monday, the 16th day of April, 1928, at 12 o'clock, noon, for the following purposes, namely:

1. To consider and vote upon the approval and ratification of the various purchases, contracts, contributions, compensations, acts, proceedings, elections and appointments by the Board of Directors or by the Finance Committee since the Annual Meeting of the Stockholders of the Corporation on April 18, 1927, and all matters referred to in the Annual Report to Stockholders for the fiscal year ending December 31, 1927. The minutes of the Board of Directors and of the Finance Committee will be open to inspec-

tion by stockholders of record during business hours at the New York office of the Corporation, No. 71 Broadway, until after the close of the meeting.

2. To elect Directors pursuant to the by-laws.

3. To elect a committee of three stockholders to administer the Corporation Profit Sharing Plan adopted at the Annual Meeting, April 18, 1921.

4. To elect independent auditors to audit the books and accounts of the Corporation at the close of the current fiscal year.

5. To transact such other business as may properly come before the meeting.

The stock transfer books will be closed at 12:01, A. M. on Saturday, the 17th day of March, 1928, and will remain closed until the adjournment of said meeting of stockholders.

By order of the Board of Directors,

GEO. K. LEET, *Secretary.*

Dated, March 15, 1928.

FORM 129

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
(ANOTHER FORM)

AMERICAN STEEL FOUNDRIES

NOTICE OF TWENTY-FOURTH ANNUAL MEETING

NOTICE is hereby given that the Twenty-fourth Annual Meeting of the Common Stockholders of the American Steel Foundries will be held at the principal office of the Corporation, No. 15 Exchange Place, in the City of Jersey City, County of Hudson, and State of New Jersey, on Thursday, the 24th day of March, 1927, at twelve o'clock, noon, for the purpose of electing Directors to succeed those whose terms of office then expire; to consider and vote upon the approval and ratification of the report of the President and of all accounts, contracts, acts, by-laws, proceedings, elections and appointments of the Board of Directors or the officers of the Corporation since the last annual meeting of the stockholders, and for

the transaction of any and all such other business as may properly come before the meeting.

F. E. PATTERSON, *Secretary.*

Jersey City, New Jersey, March 4, 1927.

As the Common Stock of the Corporation should be represented as fully as possible at the Annual Meeting, stockholders entitled to vote, who do not expect to attend in person, and who wish to vote as therein indicated, may sign the enclosed proxy, and return the same in the accompanying envelope addressed to F. E. Patterson, Secretary of the Company, Chicago, Ill.

In view of the very considerable amount of detail necessary to prepare for this meeting, it is desired that the proxy shall be returned at as early a date as possible by every stockholder.

Enclosed please find copy of the Annual Report to Stockholders, Combined Balance Sheet as of December 31st, 1926, and Profit and Loss Statement for the fiscal year ended December 31st, 1926.

F. E. PATTERSON,
Secretary

FORM 130

NOTICE OF STOCKHOLDERS' MEETING TO DISSOLVE CORPORATION

Notice is hereby given that a meeting of the stockholders of Harry A. Klebo Company will be held at Room 638, 33 South Clark Street, Chicago, Illinois, on the 24th day of February, A. D. 1928, at 2 P. M. for the purpose of voting on the proposition to dissolve the corporation.

HARRY A. KLEBO,
President

FORM 131

NOTICES OF ANNUAL MEETING OF STOCKHOLDERS AND ACCOMPANYING LETTER

NOTICE OF MEETING
GENERAL ELECTRIC COMPANY

April 23, 1926

TO THE STOCKHOLDERS OF THE
GENERAL ELECTRIC COMPANY

The Annual Meeting of the Stockholders of the General Electric Company will be held at the principal office of the Company in Schenectady, New York, on Tuesday, May 11, 1926, at ten o'clock A.M., Eastern Standard Time, for the following purposes:

1. To vote upon a proposition to change the present authorized common stock of 1,850,000 shares of the par value of $100 each, into 7,400,000 shares of common stock without par value.
2. To vote upon a proposition to change the first paragraph of Section 1 of Article X of the By-Laws of the Company to read as follows:

   "The Board of Directors shall be authorized to fix a day not more than forty days prior to the day of the holding of any meeting of stockholders as the day as of which stockholders entitled to notice or to vote at such meeting shall be determined. The Secretary shall make out a full, true and complete list of all stockholders of the Company entitled to vote at the ensuing election with the number of shares held by each, setting forth the names in alphabetical order."
3. To elect twenty Directors for the ensuing year.
4. To transact such other business as may properly come before the meeting.

The transfer books of the Company closed at three o'clock P.M., Eastern Standard Time, on Friday, the 16th day of April, 1926, and will remain closed until nine o'clock A.M., Eastern Standard Time, on the day following the final adjournment of said meeting.

If you are unable to be present, PLEASE AT ONCE SIGN AND RETURN THE ENCLOSED PROXY.

By Order of the Board of Directors:

GERARD SWOPE, *President*
M. F. WESTOVER, *Secretary*

FORM 131 *(Continued)*

NOTICES OF ANNUAL MEETING OF STOCKHOLDERS AND ACCOMPANYING LETTER

GENERAL ELECTRIC COMPANY

April 23, 1926

TO THE STOCKHOLDERS OF THE
GENERAL ELECTRIC COMPANY

At the annual meeting to be held Tuesday, May 11, 1926, formal notice of which is enclosed herewith, there will be submitted a proposition to change the present 1,850,000 shares of authorized common stock of a par value of $100 each, into 7,400,000 shares of common stock without par value. Each stockholder will accordingly receive four shares of the proposed no par value stock for each share of present stock.

The report of your Company for the year 1925 has already been sent to you. The report of orders received for the first quarter of this year was sent to you on April 14th. On page 8 of this report you will have seen that the net earnings available for dividends on the common stock for 1925 amounted to $20.49 per share. The average of the last four years was $18.75 per share, and the average of the last twenty-five years was $16.73 per share.

Provided the stockholders authorize the change, your Directors propose to pay on July 15, 1926, a *quarterly* dividend on the new common stock without par value of 75¢ per share in cash, and an *annual* dividend of $1.00 per share in Special 6% stock of the Company (such stock dividend taking the place of the stock dividend paid in October of each of the last four years).

The Board of Directors approves and recommends this plan.

To authorize it will require a two-thirds affirmative vote of the stockholders.

The proposed change in the By-Laws of the Company is for the purpose of avoiding the necessity of closing the stock books for a stockholders' meeting.

If you are unable to be present we urgently request that the enclosed PROXY BE SIGNED AND MAILED PROMPTLY.

Respectfully,

OWEN D. YOUNG, *Chairman*
GERARD SWOPE, *President*

FORM 132

STOCKHOLDERS' REQUEST FOR SPECIAL MEETING OF STOCKHOLDERS

..... Company

Dated .....19....

To the President of the

..... Company

We, the undersigned, holding ..... per cent or more of the voting capital stock of the .... Company, in accordance with the provision in Section 2 of Article III of the By-Laws, do hereby request you to call a special meeting of the stockholders of this Company to be held at ..... o'clock ....M., on the ..... day of ..... 19...., in the office of the Company ..... for the purpose of ....

and for the transaction of all such other business in connection therewith as may be necessary or desirable.

.....Owning..... shares.
..... " ..... "
..... " ..... "
..... " ..... "
..... " ..... "
..... " ..... "

FORM 133

NOTICE OF ADJOURNED ANNUAL MEETING OF STOCKHOLDERS

The.....annual meeting of the stockholders of the .....Company will be held at.....on ....., 19.... at .....o'clock, ...M., for the purpose of electing seven directors of the company and for the transaction of such other business as may properly come before the meeting.

The stock transfer books will be closed for the close of business

on ....., the ..... day of ....., 19...., and will be reopened at ..... o'clock on the morning of ....., 19....

.....
Secretary

NOTE: Sometimes, especially in the case of large corporations, it is desirable to require stockholders to present tickets of admission to the meeting. In such cases, the notice of the meeting should indicate how and where such tickets of admission may be secured. A suitable form for a ticket of admission follows:

FORM 133*a*

TICKET FOR ADMISSION TO STOCKHOLDERS' MEETING

THE ..... COMPANY
Stockholders Annual Meeting, ... Street, Chicago, Monday, February 20th, 1928, at two o'clock P. M. Admit Mr. .....

.....
Secretary

Not Transferable

FORM 134

AFFIDAVIT OF MAILING NOTICE

State of.....
County of..... } ss:

..... being duly sworn on oath, proposes and says that he is the secretary of the ..... Company, corporation of the State of .....; that on ..... day of ....., 19...., he caused to be mailed a notice of the annual meeting of said, the .... Company, of which a true copy is hereunto attached entitled Exhibit A, properly enclosed in a sealed envelope, postage prepaid and duly addressed to each stockholder of said, the ..... Company, at his post office address as per schedule of addresses hereunto attached entitled Exhibit B, depositing same in the U. S. Post Office of..... not less than ..... days before the date named for said annual meeting.

.....
Secretary

Subscribed and sworn to before me this ..... day of ....., 19...

.....
Notary Public

FORM 135

AFFIDAVIT OF PUBLISHING NOTICE

State of.....
County of..... } ss:

..... being duly sworn on oath, proposes and says that he is the secretary of the ..... Company, corporation of the State of .....; that on ..... day of ....., 19...., he caused notice of the annual meeting of said, the ..... Company, of which notice the attached Schedule A is a true copy, to be published in the....., a newspaper of general circulation in ....., and that said notice was duly published in said newspaper on the ..... day of ....., 19.... (Here this form must be modified to meet local requirements, thus if publication is required on two or more dates, that should be so indicated.)

.....
Secretary

Subscribed and sworn to before me this ..... day of ....., 19...

.....
Notary Public

It is customary at stockholders' meetings called for the election of directors to appoint tellers, judges or inspectors of election whose duty it is to distribute and collect the ballots and to report on the result of the election. If there are any statutory requirements in the state in question, these should be followed; also any by-law regulations should be observed. Tellers may or may not be sworn, but failure to swear them does not affect the validity of the election.

FORM 136

TELLERS' OATH AND REPORT

(Form)

State of....., County of.....
We .....
and.....

the undersigned duly appointed tellers of election of the.....
Company do solemnly swear that we will faithfully and impartially perform the duties of tellers in the election to be held the.....
day of ....., 19...., for directors.

.....
.....

Subscribed and sworn to before me this.....day of....., 19...

.....
Notary Public

(Form)

State of ....., County of.....
We .....
and.....
the undersigned duly appointed tellers of election of the.....
Company do solemnly swear that we did faithfully and impartially perform the duties of tellers in the election held the.....
day of ....., 19..., for directors, and that we received the votes of the stockholders by ballot and canvassed the same and that the following persons received the number of votes set opposite their names:

Names	*Votes*
.....	.....
.....	.....
.....	.....

Subscribed and sworn to before me this.....day of....., 19...

.....
Notary Public

Since questions are sometimes raised concerning whether an officer has received notice of his election, and if so, whether he has accepted the results of the election, it is usually desirable to avoid any possible misunderstanding by requiring that written notification be given and that in return a written notification of acceptance be filed with the secretary.

The following two forms are presented as being suggestive only and should be modified to suit the requirements of the particular situation:

FORM 137

NOTICE OF ELECTION: ACCEPTANCE OF SAME

(Form)

(Date)....., 19...

(To).....

I hereby notify you that on the.....day of....., 19..., at the annual meeting of the stockholders of the..... Company you were elected a member of the board of directors of said Company for a period of one year.

In accordance with Section.....of Article.....of the By-Laws of said Company, I also hereby notify you that the next regular meeting of the board of directors of said company will be held on the.....day of....., 19..., at.....o'clock, ...M.

Kindly file notice at once with this office to the effect that you accept the results of this election of yourself as a member of the board of directors.

Yours sincerely,

.....

Secretary

(Form)

(Date)....., 19...

(To).....

Secretary

.....Company

I hereby notify you of my acceptance of the office of director of .....Company in accordance with the election held by the stockholders of said Company on the.....day of ....., 19...

I also acknowledge receipt of your notice of the first meeting of the board of directors of said company.

Sincerely yours,

.....

Preceding each meeting of stockholders, the secretary should prepare an alphabetical list of stockholders giving their name, residence and the number of shares of stock owned by each. As in New Jersey, such compilation may be required by statute, but whether so required or not, it should be prepared.

The following form may be found satisfactory but, of

course, may be varied to fit the requirements where more than one kind of stock is outstanding.

FORM 138

LIST OF STOCKHOLDERS

(Form)

List of stockholders as at the closing of the transfer books on the.....day of....., 19...

Name	Residence	Number of Shares Owned
.....	.....	.....
.....	.....	.....
.....	.....	.....

In some instances it is found desirable to have printed forms of ballot prepared where directors or officers are to be elected. This simplifies the matter and makes the work of the tellers easier than would otherwise be the case. Naturally the form of the ballot must be varied to fit the requirements. The following is suggestive:

FORM 139

FORM OF BALLOT

In the election held at the.....meeting of the..... Company on the.....day of....., 19...

Office	Name of Candidate	Shares Voted
.....	.....	.....

.....
(Signature of Voter)

Form 140
Proxy to Vote—Limited

Know all Men by these Presents, That I,_____

of_____ State of_____ do hereby appoint

_____ of_____

to be my substitute and proxy, for me and in my name and behalf, to attend the_____ meeting

of the Stockholders of the_____ Company

to be held at_____ on the_____ day of_____, A. D. 19____,

and to vote, at said meeting, as fully as I might or could were I personally present.

Witness my hand and seal this_____ day of_____, A. D. 19____

Signed and sealed in presence of

_____ _____ Seal

Form 141
Proxy to Vote—Unlimited

Know all Men by these Presents, That I,_____

_____ of_____

do hereby appoint_____ of_____

_____ to be my Substitute and Proxy, with power of substitution, for me,

and in my name and behalf, to vote at any election of the_____

_____

and at any meeting of the Stockholders of said corporation as fully as I might or could were I personally present.

In Witness Whereof, I have hereunto set my hand and seal, the_____ day

of_____ A. D., 19____, at_____

_____ SEAL

Form 142
Proxy to Vote (Another Form)

Know all Men by these Presents, That the undersigned Stockholder of the General Electric Company does hereby constitute and appoint Oliver Ames, Gordon Abbott, Robert Treat Paine, 2d, and Henry W. Darling and each of them, Attorneys, Agents and Proxies for the undersigned, with power of substituton for and in the name, place and stead of the undersigned to vote upon all stock of the undersigned in the General Electric Company, at the Annual Meeting of the Stockholders of said Company to be held at the Company's Office in Schenectady, N. Y., on Tuesday, May 11, 1926, and any and all adjournments thereof, with the powers the undersigned would possess if then personally present; hereby revoking any proxy or proxies heretofore given. A majority of all, or any of said Attorneys, Agents and Proxies, who shall be present and shall act at the meeting (or if only one shall be present and act, then that one) shall have and may exercise all of the powers of all of said Attorneys, Agents and Proxies hereunder.

*Witness my (our) hand and seal this*_____ *day of*_____ *1926*

_____

(STOCKHOLDER)

Form 143

Proxy to Vote (Another Form)

AMERICAN STEEL FOUNDRIES

Proxy for Twenty-Fourth Annual Meeting of March 24, 1927.

Know all Men by these Presents, That the undersigned holder of the Common Stock (common stockholder) in the American Steel Foundries does hereby constitute and appoint Charles Miller and R. P. Lamont, and each of them, true and lawful attorneys, agents and proxies of the undersigned, with power of substitution, for and in the name, place and stead of the undersigned, to vote upon all shares of Common Stock held or owned by the undersigned, at the Twenty-Fourth Annual Meeting of the Stockholders of the American Steel Foundries, to be held at the office of the Corporation, at No. 15 Exchange Place, Jersey City, New Jersey, on Thursday, the twenty-fourth day of March, 1927, at twelve o'clock, noon, and at any and all adjournments thereof, for the consideration and vote upon the report of the President of the Corporation, and the transaction of any and all other business that may come before the meeting, including the consideration and vote upon the approval and ratification of all accounts, contracts, acts, proceedings, elections, and appointments by the Board of Directors since the last annual meeting of the stockholders of the Corporation, the election of directors to succeed those whose terms then expire, and upon any and all matters that may properly come before the meeting, according to the number of votes the undersigned would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given to vote upon such common stock, and ratifying and confirming all that said attorneys, agents or proxies may do by virtue hereof.

Either one of said attorneys, agents and proxies who shall be present and act at the meeting shall have, and may exercise, all of the powers of all of said attorneys, agents and proxies hereunder, and he is instructed to vote in favor of the approval and ratification of each and every of said accounts, contracts, acts, proceedings, elections and appointments, and the approval of the report of the President of the Corporation.

Witness my hand and seal this.....day of March, 1927.

.....(Seal)

Witness:

..... Address.....

Number of Shares of Common Stock .....

Please date and sign this Proxy in the presence of a witness, and return it promptly in the enclosed envelope to F. E. Patterson, Secretary of the Company.

IX

THE BOARD OF DIRECTORS

1. Liability of Directors

Under the common law, if directors act in good faith and without negligence, they are not liable to creditors for paying dividends which diminish capital. If, however, they act fraudulently or with gross negligence they become personally liable to creditors. Now, however, the common law rule has been superseded or modified by statute in practically every state. In some states it is enacted that if the directors pay dividends when the corporation is insolvent or which render it insolvent, those assenting to such act are held jointly and severally liable to creditors, either for the amount of debt due at the time the dividend is declared, or for both these debts and such others as may be contracted while the directors remain in office. In some states directors are held personally liable for any diminution of the corporation's capital as the result of paying dividends.

As to the courts, they generally hold that dividends may be paid only from profits.

The provision of the New York Stock Corporation Law, Sec. 58, is as follows:

"No stock corporation shall declare or pay any dividend which shall impair its capital or capital stock, nor while its capital or capital stock is impaired, nor shall any such corporation declare or pay any dividend or make any distribution of assets to any of its stockholders whether for a reduction of the number of its shares or of its capital or capital stock, unless the value of its assets remaining after the payment of such dividend, or after such distribution of assets, as the case may be, shall be at least equal to the aggregate amount

of its debts and liabilities including capital or capital stock, as the case may be."

In over one-half the states the law requires that dividends be not paid except from profits; and in many states it is further provided that such profits must arise from the company's business. In California dividends may be declared only from surplus profits arising from the business, unless the directors secure permission to the contrary from the commissioner of corporations. In *Dominquez Land Corp.* v. *Daugherty,* 45 Cal. App. Dec. 884, it was held that where the directors secure the commissioner's permission they may declare dividends from any legitimate profits, whether arising from earnings or otherwise.

2. Function and Organization of Board of Directors

The board of directors is the managing body of the corporation. The directors are trustees or agents of the corporation and as such must manage the affairs of the corporation for the benefit of the stockholders. They intervene between the stockholders and third persons and in doing so must always seek to advance and protect the interest of the stockholders. The dealings of the directors with the company they represent are governed by the law of agency.

As such, the stockholders do not possess power to enter into contracts with third persons which would bind the corporation; hence the necessity of agents to perform such duties. The stockholders possess the power to elect directors; but having elected them they are practically powerless to act further, and must confide the management of the affairs of the corporation to the directors.

Upon the organization of a corporation the board of directors is elected, usually in accordance with statutory provision. In the absence of statutory provision, the stockholders may elect the directors when and as they wish. Within a reasonable time after election the board of directors assemble and organize, in order to conduct the affairs of the company.

A director should let it be known that he accepts his position. This he may do formally, by oral or written statement; or informally, by acting as a director. Some misunderstanding and difficulty might be avoided if at the time of election a written statement were secured from each director elected to the effect that he accepts.

One of the first duties of the board of directors is to elect officers. Provision to this effect is usually found in the by-laws.

As individuals, the directors are powerless to transact the business of the company. They can act only as a board. "The power invested in directors to control and manage the affairs of a corporation is not joint and several but joint only." *Hamlin* v. *Vinon Brass Co.,* 68 N. H. 292. The assent of the majority of the board when secured separately is not enough. The board must be duly assembled. The reason for this is that consultation and conference possess certain benefits not obtainable when each member gives his assent at a different time and place from the other members.

3. Power of Board of Directors

The following quotation from Cook, *Corporations,* Sec. 712, states the principles upon which the power of the board of directors is based:

"All contracts of a corporation are to be made by or under the direction of its board of directors. The board of directors make corporate contracts by a regular vote of the board; or by authorizing an agent to make them; or by allowing an agent to assume and exercise that power; or by accepting a contract or its benefits after it has been made by an unauthorized agent. And in all cases the board of directors, and not the stockholders, nor the president, secretary, treasurer, or other agent, is the original and supreme power in corporations to make corporate contracts. The stockholders, indeed, have very few functions. The board of directors have the widest of powers. All of the various acts and contracts which a corporation may enter into are

entered into by and through the board of directors. The board of directors make or authorize the making of the notes, bills, mortgages, sales, deeds, liens, and contracts generally of the corporation. They appoint the agents, direct the business, and govern the policy and plans of the corporation. The directors elect the officers, and in this connection it may be added that 'at common law there is no limit to the number of offices which may be held simultaneously by the same person, provided that no one of them is incompatible with any other.' They institute, prosecute, compromise, or appeal suits at law and in equity which the corporation brings or has brought against it. But there are limitations on their powers. If the board of directors attempt to do an act or make a contract which the corporate charter does not give the corporation the power to do or enter into, then any stockholder may enjoin that act or contract. Moreover, the directors can contract and act only as a board, duly notified and assembled. The members of the board cannot agree separately and outside of the meeting and thereby bind the corporation. Nor can a minority of the board meet and bind the board. A majority must be present, and then a majority of that majority binds the corporation. A single director has no power to contract for the corporation."

Courts rigidly enforce the requirement that directors must act as a board. An individual director, even though he owns a majority of the stock, cannot execute a binding contract on the corporation. *Allemong* v. *Simmons,* 124 Ind. 199.

There is an exception to this rule where it appears that by long usage the directors have acted separately and in an individual capacity. *Bank, etc.,* v. *Rutland, etc., R. Co.,* 30 Vt. 159. For other exceptions the reader is referred to Thompson, *Corporations,* Sec. 1174 (3rd ed.)

4. Tenure of Office of Directors

It is a customary statutory provision that the directors shall be elected annually and shall serve for a period of one

year, but variations from this time provision are found. As a rule the statutes require that the directors for the first year be named in the charter. Sometimes the tenure of office of directors is fixed by by-law instead of by statute. It is a customary statutory provision that directors shall hold office until their successors are elected; so that if directors are not elected at the regular time those in office hold over, with the same powers and liabilities as before the close of the term for which they were elected, until their successors are chosen. The same thing happens when for any reason the election held to choose successors is held invalid.

A director cannot be compelled to hold over, however; neither can one who does not accept office when regularly elected a director for one year, and who has no knowledge of such election, be regarded as holding over, since in reality he is never a director. *Bramblet* v. *Commonwealth Land, etc., Co.*, 26 Ky. L. 1176.

Directors possess no implied power to fill vacancies in their own board; but this power may be conferred upon them by statute, the appointment or election holding until the next regular election of directors. This power is lost, however, if the number of directors is reduced below that required to make a quorum.

As to removal of directors, the power is not well defined, but stockholders are sometimes empowered by statute to remove directors for cause. As a rule, directors cannot be removed arbitrarily. In any event, the provisions of the state laws must be followed, as must also the charter and by-law requirements. Where officers hold office by contract, provision for their removal may be made therein for their removal; but as directors are elected, this does not apply to them. Nevertheless the power to remove directors may be reserved by by-law provision if such provision is not contrary to statutes or charter. *State* v. *Kupferle*, 44 Mo. 154. Persons entering the service of the company as officers of any kind are presumed to know the by-law provisions.

In the absence of statutory or by-law provisions, the rule

is that directors or officers may be removed for cause. What constitutes sufficient cause depends on the facts in each case. It has been held, for example, that the failure of a director to attend meetings for four months is not sufficient cause for declaring the office vacant, where the by-laws provided that the board could remove a director or declare his office vacant and elect another in his place, if he should neglect attendance at meetings for a long time. *Halpin* v. *Mutual Brew. Co.*, 20 App. Div. 583.

The tenure of office of directors is sometimes ended through the occurrence of an event which disqualifies them. Thus if the statute requires that the directors be stockholders, a director's term of office automatically ends when he disposes of his stock.

Directors may resign at any time and in any manner that they see fit. An oral resignation is sufficient, although it is always preferable to put it in writing. Long continued absence from meetings may be construed as a resignation. It is possible that statutory, charter, or by-law provisions might require a director to continue in office for a specified time, but otherwise he may resign whenever he chooses. A statutory or by-law requirement that directors shall hold office for one year does not prevent their resignation sooner. *Briggs* v. *Spaulding*, 141 U. S. 132. There may, however, be exceptional instances where directors could not resign, as, for example, to purposely shift responsibility.

A resignation is effective upon being tendered; no acceptance thereof is necessary.

Sometimes it is provided by statute, charter or by-law that a directorship may be vacated upon the acceptance by the occupant of some other office in the company.

For acts done by a corporation after the date of his resignation no director can be held in any way responsible.

5. De Facto Directors

A de facto director, in the words of Lord Ellenborough, is "one who has the reputation of being the officer he assumes

to be, and yet is not a good officer in point of law." *Rex* v. *Bedford Level,* 6 East 356. An element necessary to make a director a de facto officer is that he openly exercise the functions of a director. A regular election is presumed, even though no written proof thereof exists. De facto directors may bind the corporation in the same sense as may de jure directors. It has been stated that de facto directors must either have had the semblance of an election or must have exercised the functions of directors for a sufficiently long time to justify the presumption that they were elected. *Mahoney Min. Co.* v. *Anglo-Californian Bank,* 104 U. S. 192. There are, however, cases which indicate that the color of an election is not necessary, but merely the exercise of the functions of a director. *Litchfield Iron Co.* v. *Bennett,* 7 Cow. (N. Y.) 234.

An illustration of an irregular election such as would constitute sufficient ground to create a de facto director is where a director is elected by some method contrary to the provisions of the charter, but where he has acted as if properly elected and for a sufficiently long time to create a presumption that he was properly elected. Similarly, one ineligible to the office of director, if elected and held out to the public as a director, would be regarded as a de facto director; and especially where the corporation attempts to impeach his acts when the interest of a third party is involved. But for a detailed consideration of ineligibility the reader is referred to Thompson, *Corporations* (3rd ed.) Sec. 1221.

This does not mean that any person claiming to hold the position of director will be supported in his contentions. If, for example, after years of inactivity, a board of directors were to meet and attempt to act as de facto directors, their acts would not be upheld as the official acts of the corporation.

De facto directors are subject to the same personal liabilities as are de jure directors, since they cannot plead that they are not de jure directors.

6. Directors' Meetings

Directors' meetings are either regular or special, and, in general, the principles which govern stockholders' meetings also govern directors' meetings. Regulations governing directors' meetings are usually found in the by-laws. These frequently provide that the regular meetings shall be held at a fixed time and place.

There is some doubt as to whether notice of directors' meetings must be given with the same strictness as notice of stockholders' meetings. The rule is that notice of all special meetings of directors must be given, but in general, the requirements are not so strict as in case of stockholders' meetings. Cook, *Corporations* (8th ed.) Sec. 713. Notice of regular meetings is usually contained in the by-laws. Adjournment is sufficient notice of adjourned meetings. Only notice of special meetings must be formally given, the time and place being stated. Where the by-laws fail to specify the time and place of regular meetings the directors should be given special notice of all such meetings; in some states such notice is made obligatory by statute. If the by-laws specify the day of the regular meeting but not the hour, special notice must be given of the hour. However, where all the directors appear at the meeting, failure to give notice is not material.

7. First Directors' Meeting

At the time and place determined upon the directors report for their first meeting. As a rule this is held immediately after the first stockholders' meeting and at the same place. The directors proceed to elect officers in accordance with the provisions of the by-laws, having due regard to all specifications therein concerning tenure of office. This is the usual procedure, although in some instances the officers are elected by the stockholders. The power of the directors with reference to the adoption of by-laws varies in different states. In Illinois they are given this power exclusively. In Ohio

they are empowered to adopt by-laws for their own government, which they may change at pleasure.

8. Adjourned Meetings

Express provision is frequently found in the by-laws to the effect that where fewer directors are present than are necessary to constitute a quorum, those present may adjourn to any future day preceding the date of the next regular meeting. The only notice required of an adjourned meeting is the record on the minutes of adjournment, statement being made therein of the day, hour and place of such adjournment.

Sometimes meetings are adjourned subject to the call of the president. In such case notice must be given of the adjourned meeting; but it is not necessary to state the nature of the business to be transacted, since the adjourned meeting is merely a continuation of the original meeting, and can transact only such business as might have been transacted at the original meeting.

It is important that the hour as well as the day of an adjourned meeting be specified in the motion to adjourn. Failure to do so constitutes the adjourned meeting a special meeting and notice to all directors becomes necessary.

9. Place of Meeting

It is presumed that the meetings of directors will be held at the general office of the corporation, but this is not necessary unless so specified in the statutes, charter, or by-laws. Unless there is provision to the contrary directors may meet anywhere in the state of incorporation. *Corbett* v. *Woodward,* 5 Sawy. (U. S.) 403. If the by-laws specify that regular meetings shall be held at a certain place, but nothing is said therein as to special meetings, these latter may be held elsewhere in the state. *Ashley Wire Co.* v. *Ill. Steel Co.,* 164 Ill. 149.

As stated, it is a general rule that directors' meetings should be held within the state of incorporation. However,

in the absence of provision to the contrary, directors' meetings may be held outside the state of incorporation. Even though the by-laws require regular meetings to be held within the state of incorporation, special meetings may be held in another state. Not infrequently the charter provides for this situation by stating that directors' meetings may be held anywhere in the United States. In some states is found statutory provision to the same effect. The rule has been stated in *Aspinwall* v. *Ohio, etc., R. R. Co.*, 20 Ind. 492, thus:

> The directors, in the absence of special regulations, may hold meetings out of the state for the performance of any acts which they may do as the agents of the corporation. But, unless expressly authorized, they cannot meet outside of the state and perform corporate acts, such as enacting by-laws, making assessments on unpaid subscriptions, or electing or appointing officers of the corporation.

Corporations and stockholders will be estopped from denying the validity of acts performed at directors' meetings held outside the state of incorporation.

10. Special Meetings of Directors

Provision relative to the manner of holding special meetings may be found in statutes, charter, or by-laws; if so, strict compliance therewith is necessary if the acts of the meeting are to be valid.

Notice must be given of all special meetings, each director being informed of the time, place and purpose of the meeting. The reason for this requirement is that the company deserves the services of each director, and no director should be deprived of his right to attend and participate in the discussion of a meeting. The only exceptions to the rule are when:

1. There exists express provision to the contrary in the charter or by-laws.
2. There exists an established usage to the contrary.
3. It is impossible to give the notice.

In all other cases failure to give proper notice to each

director will render invalid all acts performed at the meeting, regardless of the vote in their favor, unless all the directors are present and participate in the proceedings. *Doernbecher* v. *Columbia City Lumber Co.*, 21 Ore. 573.

11. Notice of Special Meetings

As to what should be contained in the notice of a special meeting, and what effect the statement of the particular business of a special meeting has on the power of the meeting to transact other business, the rule laid down by the New York court of appeals in *In re Argus Co.*, 138 N. Y. 557, is that any business whatever may be transacted at a special meeting called by a general notice; but where the notice specifies the business to be done, no extraordinary business outside of such specified business may be transacted. *Mercantile Library Hall Co.* v. *Pittsburgh Library Assn.*, 173 Pa. St. 30.

Ordinarily, notice of special meetings must be sent to all directors; but there may be exceptions, as, for example, where a director is out of the state and cannot be reached, and an emergency exists demanding immediate action. The rule is stated thus by the supreme court of Arkansas: "Where notice is practicable it must be given; it can be dispensed with, when impracticable, only to meet an emergency; and the act done must appear reasonably necessary to the welfare of the corporation." *Bank of Little Rock* v. *McCarthy*, 55 Ark. 473. Also, notice may be dispensed with when all directors are present and participate in the meeting. Custom or usage may also make notification of special meetings unnecessary.

The transactions performed at a special meeting which may be held void for lack of adequate notice to all directors may be ratified at a subsequent meeting of directors duly called. This is true even though at such subsequent meeting all the members are not present. All irregularities in meetings of the board of directors may be ratified by the stockholders, and failure on their part to disaffirm such pro-

ceedings will be regarded as a ratification. *Ashley Wire Co.* v. *Ill. Steel Co.,* 164 Ill. 149.

Where one meeting ratifies the acts of another meeting, the meeting so ratifying must be a legal one.

An illustration of how custom or usage may make the usual notification unnecessary is where directors habitually give the assent to contracts separately instead of in meeting assembled.

12. Service of Notice

All provisions of the statutes, charter, or by-laws relative to service of notice must be observed. Where such provisions are absent, usage controls, and in general, any form of notification which gives to the directors the necessary information relative to the proposed meeting is sufficient. *State* v. *Smith,* 22 Minn. 218. When all directors attend no question can be raised as to the sufficiency of the notice.

The common law rule is that notice must be by actual personal service, sufficient time being allowed to give directors a fair chance to attend the meeting. This rule applies in the absence of any specific provision on the subject in the law, charter, or by-laws. A written notice is then insufficient, if simply left at the residence or place of business of the director.

However, service of notice by mail, in the absence of any specified method, is regarded as sufficient, if the notice is deposited in sufficient time to enable the director to travel to the place of meeting by the customary manner of conveyance. *Covert* v. *Rogers,* 38 Mich. 363.

The burden of proof of the inadequacy of the call is on those who attempt to deny the regularity of a meeting.

13. Quorum

The rule is that, in case of a definite body, such as a board of directors, a majority of the entire board must be present in order to transact business. This rule may be modified by

statutory, charter, or by-law provision, or even by usage.

A director, unlike a stockholder, cannot be present by proxy, because he is selected on the score of personal qualifications. His proxy would be excluded in determining whether a quorum is present in the absence of any express provision permitting it. The same is true of stockholders, but whereas it is almost universally prescribed by statute that stockholders may vote by proxy, such provision would be unusual in case of directors.

With a quorum duly assembled, a majority thereof may transact business, in the absence of express provision to the contrary. In the election of officers, a plurality elects in the absence of express provision to the contrary. *Booker* v. *Young,* 12 Gratt (Va.) 303.

In order that the above rules may be applied the meeting must be duly assembled, by notice where notice is necessary. Where the assembly is accidental or where the required notice was not given, action by the majority of those present would not bind the corporation.

By statutory, charter, or by-law provision a quorum may be made to consist of less than a majority.

The refusal of members of the board to vote does not affect the quorum, so long as the number refusing to vote does not exceed one half of those present.

Sometimes a director is personally interested in a measure to be voted upon by the board. Such interest disqualifies him from voting and he should preferably withdraw from the meeting during the discussion of the measure and while the vote thereon is being taken. He cannot be counted as a member of the quorum when such measure is under consideration. An illustration of such a measure would be the consideration of an increase in the salary of a director who also holds some salaried position in the company. Should a member vote on a measure in which he is personally interested the act would be invalid, providing his presence is necessary to constitute a quorum or his vote is necessary to carry the measure. Some courts hold that such acts are not

void per se, but are avoidable upon complaint of the stockholders. *Parsons* v. *Tacoma Smelting, etc., Co.,* 25 Wash. 429. Also, in some states, it is held that the vote of an interested director vitiates the act whether or not his vote was necessary to its passage. *Ashley* v. *Kinnan,* 2 N. Y. S. 574.

If certain persons are ex officio members of the board their presence is counted the same as that of other members in ascertaining whether a quorum is present.

If less than a quorum attempt to transact business their acts are void and cannot be ratified at a later meeting of directors or stockholders. *Price* v. *Grand Rapids, etc., R. Co.,* 18 Ind. 58. One-half the directors do not constitute a quorum where the rule holds that a majority is necessary to constitute a quorum. *Leary* v. *Interstate Nat. Bank,* 63, S.W. 149. Sometimes, however, under certain circumstances acts passed at meetings at which a quorum is not present are said to be voidable by the corporation, hence may be ratified at a later meeting of directors duly called and legally constituted. *In re Phosphate of Lime Co.,* 28 Law T. (N.S.) 932. It is clear that the acts of a minority cannot be ratified:

1. Where the act should have been transacted by the ratifying body in the first place.
2. Where the act is not merely voidable, but absolutely void.

14. Limitations on Powers of Directors

Except in so far as the powers of the directors are expressly limited, they are supreme in the management of the corporation. The stockholders possess no power to restrict or control them. In the making of contracts their power is absolute, as long as they act within the powers expressly or impliedly granted them by the state. They also possess full power to act in the management of the ordinary affairs of the company. *Chase* v. *Tuttle,* 55 Conn. 455. The officers of the corporation possess no powers to make contracts binding upon the corporation except as authorized to do so by the directors. Neither will the courts interfere in the

management of a corporation unless it is clear that the directors are guilty of fraud or have committed a breach of good faith toward the stockholders. *Hunter* v. *Roberts, etc., Co.*, 83 Mich. 63.

Yet there may exist certain limitations on the powers of directors in the laws of the state, the decisions of courts, and the charter and by-laws of the company. The power vested in the directors is determined by the charter and by-laws in accordance with the laws of the state, and such power cannot be exceeded.

In all states, except Illinois, the stockholders possess the power to enact by-laws stating and limiting the powers of the directors. This power is inherent in the stockholders but is usually conferred by statute. The directors cannot exceed the powers defined for them by the stockholders in the by-laws.

Nevertheless, when acting within their powers, the directors possess absolute authority. The contracts made by the directors cannot be annulled by the stockholders, nor are the directors under any obligation to consult with the stockholders regarding the business affairs of the corporation.

The relative status of the stockholders and directors has been expressed as follows: "The power of a corporation formed under the corporation act of this state, as to its relation with third persons, is vested in and exercised by the directors. The power of the shareholders is limited to a few matters concerning its internal affairs; namely, the election of directors, the increasing of the capital stock, the adding to the powers and purposes of the corporation, and the authorizing its dissolution." *Oregonion R. Co.* v. *Oregon R. & Nav. Co.*, 23 Fed. 232.

The directors possess no power to repudiate acts of stockholders and in certain instances they can act only with the assent of the stockholders. Such assent may be required by statute or charter provision, and thus certain powers which in the absence of such provision would be wielded exclusively by the directors can be exercised by them only in cooperation

with the stockholders. Thus directors may be prohibited from mortgaging the corporate property without the assent of the stockholders. Whether such a requirement occurs in the statute or in the charter, the failure of the stockholders to assent would render the mortgage invalid. *Rochester Savings Bk.* v. *Averell,* 96 N. Y. 467.

Neither can directors make any fundamental changes for which there exists no authority in the charter. Thus they cannot vote to increase or decrease the authorized capital stock of the company, and this rule has been applied where the charter vested all the power of the corporation in the board of directors. *Gill* v. *Balis,* 72 Mo. 424. They cannot change the charter nor apply to the legislature for an increase of corporate powers. *State* v. *Adams,* 44 Mo. 570. At common law the directors cannot dispose of all of the corporate property without the consent of the stockholders. The directors cannot alter or amend the charter. Only the stockholders possess this power, although they may ratify the unauthorized acceptance of an amendment by the directors. *Verner* v. *Atchison, etc., R. Co.,* 28 Fed. 581. An exception to the rule occurs where the amendment makes no fundamental change in the corporation but applies merely to the furtherance of existing powers, so that there is nothing in the grant demanding action on the part of the stockholders. *Eastern R. Co.* v. *Boston, etc., R. Co.,* 111 Mass. 125.

Unless expressly authorized to do so, directors possess no power to dissolve the corporation; neither can they dispose of all of the property of the corporation without the consent of the stockholders, unless necessary to do so to pay the debts of the corporation. On the same principle it has been held that directors cannot dispose of such part of the corporate property as would virtually end its business. The exception to such cases is where the sale of the corporate property is necessary to the payment of the corporate debts. There may be exceptions also where the situation is so desperate as to preclude the possibility of continuing in business or where the sale is necessary to prevent a total loss.

Directors cannot release parties from the terms of legitimate contracts with the corporation. They are trustees of the corporate property for benefit of stockholders, and cannot give it away to the detriment of the purposes for which the corporation was established. *Bedford R. Co.* v. *Bowser,* 48 Pa. St. 29.

15. Delegation of Powers

It is now generally held that the board of directors may delegate to agents of their own appointment the performance of any and all acts which they themselves are empowered to perform. Clark & Marshall, *Corporations,* Sec. 732. It is not necessary that they be granted this authority by statute. Moreover, those to whom the power is delegated may employ such assistants as may be necessary to conduct the business thus delegated. Formal action of the board is not necessary to confer such authority. It may delegate authority to mortgage corporate property, and it is customary to authorize some officer to execute the necessary instruments. If such power is delegated to a committee the committee may in turn delegate the power to a subagent.

There are certain limitations on the power of the board of directors to delegate their authority, however. Where the matter is one involving the exercise of discretion and judgment the authority of the directors cannot be delegated unless there exists express authority or custom to that effect. *Brewster* v. *Hobart,* 15 Pick. (Mass.) 302. Even as to this rule there are limitations, since officers to whom powers are delegated must sometimes exercise judgment and directors cannot insure their fidelity and honesty. If they use care and judgment in the selection of officers they cannot be held responsible for losses resulting from errors and wrongful acts committed by such officers.

There is no exception to the rule that purely ministerial duties may be delegated. An illustration is the power to transfer and assign notes, or to raise money by discounting notes. Where a matter involves discretion and the directors

have decided upon the line of action to be taken they may delegate to a committee or agent selected from their own number the ministerial acts necessary to carry the plan into execution. In such a case the court said: "The directors delegated no discretionary power. They determined upon the mortgage and made the president and treasurer simply the agents to execute formally that which they themselves had voted to do." *Saltmarsh* v. *Spaulding*, 147 Mass. 224.

What discretionary powers cannot be delegated by the board of directors must be determined from the provisions of the statutes, charter, by-laws, resolutions of stockholders and from usage.

Powers expressly granted to the corporation or, what is equivalent, to the board of directors, cannot be delegated. Thus if the by-laws empower the directors to sell the corporate property, they cannot delegate this power. Where, as is usual, directors are expressly empowered to declare dividends such power cannot be delegated.

16. Directors' Committees

The charter or by-laws may grant to directors the power to appoint agents and from this may be inferred their power to appoint committees. Sometimes, however, the power to appoint committees is conferred expressly.

A distinction should be drawn between committees appointed to make reports which may be accepted or rejected by the board and executive committees which are empowered to bind the corporation by contract.

The power of an executive committee to execute contracts depends, of course, (1) upon the authority of the directors to delegate such powers and (2) upon the express wording of the resolution of the board of directors creating the committee and authorizing it to act.

The authority of committees varies in accordance with the provisions of the resolutions creating them and persons dealing with them must take notice of their powers. *Alton Grain Co.* v. *Norton*, 105 Ill. App. 385. In any event the

committee cannot exercise powers which the directors themselves do not possess. Frequently it will be found that the acts of the committee must be submitted to the board of directors for approval. As a rule, committees cannot inaugurate radical departures in business policies.

As to meetings of committees, quorum, notice, etc., the same rules apply as apply to meetings of the board of directors which appoints the committees. Notice is required the same as in case of special meetings of directors unless fixed rules have been adopted stating the time for regular committee meetings.

Acts performed beyond the delegated powers of the committee are ultra vires and not binding on the company. They may, however, be ratified by the stockholders either expressly or by acquiescence, as by accepting the benefits of such unauthorized acts.

17. Fiduciary Powers of Directors

The directors occupy a fiduciary relationship to the corporation and to the stockholders, being intrusted with the management of the corporate affairs for the benefit of the stockholders. The trust is towards the stockholders as a group, not to any individual stockholder. Directors are not trustees in a technical sense, but the functions which they perform are fiduciary in character and they are not allowed to make a profit by virtue of their position. "Practically, the directors are trustees, and the stockholders are the cestuis que trust." *Pearson* v. *Concord, R. Corp.*, 62 N. H. 537.

Directors cannot make use of the information they possess to advance their own interests at the expense of the stockholders, as, for example, manipulating the price of the company's stock. They are acting in the interest of the stockholders, not their own interest, and they are even prohibited from subjecting themselves to temptations which might incline them to serve their own interests rather than those of the stockholders. It follows that contracts in which a director has a personal interest are subject to close scrutiny

and that they will not be sustained if there is any question as to his good faith.

As to creditors of the corporation, the directors are under certain obligations, but not as fiduciaries; and there are certain acts for the consequences of which directors are liable to the creditors. The assets of a corporation may be regarded as a fund to which creditors may look for protection, and the directors will not be permitted to so dispose of it as to deprive creditors of their rights relative thereto. Although, as a rule, directors are not trustees of the creditors, there may arise situations where they become such, as for example, where a company has become insolvent and the stockholders' interest in the assets has been largely or altogether dissipated. *Olney* v. *Conn. Land Co.*, 16 R. I. 597.

As to the power of a director to contract with his corporation, such a contract is binding only when ratified by a majority of the directors acting wholly free of the influence of the contracting director and when the terms of the contract are fair and equitable. *Crocker* v. *Cumberland Win., etc., Co.*, 31 S. Dak. 137. This does not mean that directors are prohibited from making profits out of their dealings with the company, but that they are prohibited from making secret profits therefrom. They are under obligation to make full disclosure of all circumstances attending their dealings with the company which might benefit them in some special way. It is out of this situation that there has arisen a body of rules which apply to directors when they deal with their corporation.

Some of the more important of these are:

1. Directors cannot vote on measures in which they have a personal interest.
2. Directors must not use corporate funds for the payment of private debt.
3. Directors cannot exercise any power against the interest of the corporation, its stockholders or creditors.
4. Directors cannot secure a preference over other creditors in the liquidation of corporate indebtedness.

5. Directors cannot be parties to contracts between the corporation and third persons.
6. A majority of the quorum of the directors cannot contract with the corporation in matters in which they are all interested.

Some courts go so far as to maintain that all contracts between directors and their corporation are voidable per se and that a director can have no dealings with his company, but the more usual view in this country is that such contracts are not void but voidable at the option of the corporation or of the stockholders, provided the action to disaffirm the contract is taken within a reasonable time; and to avoid them some injury must be shown. *Copsey* v. *Sacramento Bk.*, 133 Cal. 659. In general, such contracts may be set aside on slight grounds and are subjected to the closest scrutiny and the burden is always upon the directors to show that the transaction is fair. *Davis* v. *Davis Co.*, 63 N. J. Eq. 572. Directors must not make a profit out of the trust imposed upon them and they must account for all secret profits.

Directors may loan money to the corporation and may take security for the same; but here, too, the transaction is severely scrutinized and must be performed in utmost good faith. *Hallam* v. *Indianola Hotel Co.*, 56 Iowa 178.

18. Negligence of Directors

In general, directors are bound to carry on the affairs of the company with diligence and good faith, and to observe the requirements of statutes, charter and by-laws. Directors are liable for damages resulting from their unauthorized or negligent acts for the reason that an agent is liable to his principal for damages resulting from his negligence or violation of authority. What constitutes negligence or violation of authority must be decided upon the facts in each case. As to the degree of care required, the rule is the same as for the agents of natural persons who receive remuneration for their services. Directors are held liable for ordinary negligence,

and are expected to exercise such care and judgment as would be exercised by a man in looking after his own business.

Some courts have held, however, that where directors serve without compensation they are not held to the same strict accountability as are agents who receive adequate compensation for services rendered; but that they are merely expected to use the diligence and act with the prudence men ordinarily are expected to employ who do services gratuitously. *Dunn* v. *Kyle,* 14 Bush (Ky.) 134.

Still another line of decisions is to the effect that directors are trustees occupying a fiduciary relationship, and that in accepting the position of director they impliedly undertake to employ as much diligence and care as the situation demands, and to give the company the full benefit of their ability and services. Lack of compensation in no way absolves them from using the care and diligence that a man would employ in his own business. This is probably the correct explanation of the duties and obligations of directors, being supported by a long line of cases.

So long as directors act with the proper degree of care and diligence there are no limitations on their exercise of judgment and discretion. This is because the stockholders are assumed to use care in selecting men of experience and good judgment to fill the position of directors. Neither can directors be held liable for honest mistakes of judgment; consequently they cannot be held liable for resulting losses. In *Spering's Appeal,* 71 Pa. St. 11, the court said: "Yet they are not liable for mistakes of judgment, even though they may be so gross as to appear to us absurd and ridiculous, provided they are honest and provided they are fairly within the scope of the powers and discretion confided to the managing body." Directors are not held liable for honest mistakes of law, although failure to secure competent legal advice may render them guilty if they are doubtful as to the correct course to pursue.

As to the acts of subordinate officers, directors cannot relinquish their general supervision, and if such subordinate

officials are permitted or encouraged to commit fraud or other wrongful acts through the withdrawal of such supervision, the directors will be held liable. However, so long as such subordinate officers act within the discretion ordinarily permitted to such officers, the directors cannot be held liable for their misdeeds so long as the directors continue to exercise reasonable care in the supervision of the affairs of the company. *Wheeler* v. *Aiken Loan, etc., Bk.,* 75 Fed. 781.

As to ultra vires acts of directors, the rule is that they are held personally responsible to the company for losses resulting from acts clearly beyond their powers. This is true even though they act in entire good faith, the rule exonerating directors for liability resulting from mistakes of judgment applying only so long as they act within the scope of their powers. Just what are the limitations of the powers of the directors must be determined by the statutory, charter and by-law provisions. There is, however, an exception to this rule where the mistake of the directors occurs notwithstanding the fact that they act in good faith and after exercising proper care. *Hodges* v. *New Eng. Screw Co.,* 1 R. I. 312.

19. Liability of Directors to Creditors and Others

As to creditors and other third parties directors possess certain liabilities. In general, they are not liable personally for corporate debts, except for such as they take it upon themselves to create before the corporation is organized. *Chicago Coated Board Co.* v. *Bear,* 166 Ill. App. 258. Directors may bind themselves to be personally responsible for corporate debts, however, and where they incur an indebtedness beyond a certain amount, frequently the amount of the capital, they may be made liable by statutory provision.

Mismanagement of the corporation affairs does not render directors liable to creditors unless such liability is expressly fixed by the statutes or charter; but in some courts directors have been held liable for gross mismanagement in the absence of express provision to that effect. Directors are held liable for fraudulent acts, however, or for such acts of

malfeasance as conducting the company's affairs for their own personal benefit. *Warren* v. *Para Rubber Co.*, 166 Mass 97.

Directors sometimes authorize the issuance of prospectuses in connection with the sale of corporate securities or for other purposes, the object being to induce the public to purchase stocks or bonds, or otherwise become financially interested in the concern. The public depends on this information contained in making commitments. For all misrepresentations in prospectuses and circulars of this kind as well as for omission of matter which might affect the decisions of interested parties, directors are held liable. *Hubbard* v. *Weare*, 79 Iowa 678. To hold directors liable for such misrepresentations it is not necessary to show that they knew such statements to be false; but to sustain an action for fraud brought against the directors it must be shown that they knew or had reason to believe that the statements were false, and that plaintiff relied thereon to his loss. *Cole* v. *Cassidy*, 138 Mass. 437. Following are listed some decisions in which directors were held responsible for fraudulent misrepresentation. They may be regarded as typifying cases involving the liability of directors.

1. Directors held personally liable for issuing bonds falsely reciting that they were first mortgage bonds. *Bk. of Atchison Co.* v. *Byers*, 139 Mo. 627.
2. Directors held personally liable for inducing a stockholder to loan money to the corporation by means of false representation, fraudulently made. *Kinkler* v. *Junica*, 84 Tex. 116.
3. Directors of a loan association held personally liable for publishing a false statement as to the condition of the company, thereby inducing a person to invest. *Squiers* v. *Thompson*, 172 N. Y. 652.
4. Directors held personally liable to a purchaser of stock relying on the report of the condition of the bank signed by the directors, where it was proven that the report was false and the stock of no value. It was held unnecessary to prove that the directors signing knew the statement to be untrue. *Prewitt* v. *Trimble*, 92 Ky. 176.

20. Statutory Liability of Directors

Many provisions are found in the statutes of the various states making directors liable in one way or another. A common type of such provision is that prohibiting the directors from incurring debts in excess of the capital or solvent stock of the company. Another requirement sometimes found is to the effect that the company shall not engage in business until a certain amount of the capital stock is fully paid up. Still other provisions are to the effect that upon failure to file certain specified reports the directors shall become liable as to certain debts of the company. For detailed consideration of such statutes the reader is referred to legal treatises. It may be noted here that liability under such statutes attaches only to such directors as hold office at the time of default or at the time of occurrence of the prohibited acts and who consent, in concurrence with others, to the illegal act. Subsequent directors become liable only if they expressly or impliedly ratify the prohibited act.

Frequently such statutes make the directors jointly and severally liable, in which case action may be brought against any one or more of the directors. In other instances the wording of the statute leaves in doubt the question as to what parties action must be brought against. Where the liability is joint and several the personal liability of each director is unlimited, except by the amount of the debts falling within the terms of the statute.

The statutes of many states impose penalties upon directors for failure to make and publish or file reports at stated periods, the most common penalty being the imposition of personal liability for debts of the company.

Where the statutes create a personal liability on the part of the directors for debts incurred in excess of the capital stock, certain questions arise as to just what this limitation amounts to. Thus if the total authorized capital stock, or the amount subscribed or the amount paid in, or even some other amount, may be inferred in the absence of a clear

wording of the statute. In general, by capital stock, as referred to in such statutes, is meant that which has been subscribed and fully or in part paid in. The reason for including stock not yet fully paid up is that the subscribers are liable thereon for its full amount, so that the full amount of the stock subscribed and either fully or partly paid up may be regarded as a fund for the protection of creditors.

Some questions may also arise as to what obligations of the company must be included in determining whether the debt limit set by statute has been exceeded. Thompson, *Corporations,* 3rd ed., Sec. 1455, says that "the extent of such indebtedness can not be limited or determined on the principle of mutual credit, but is fixed and settled by the full amount of the debt due in its popular and ordinary legal sense."

As to those directors who dissent from the action of the main body in incurring debts in excess of the limit set by statute, the laws of some states make no provision, while those of other states provide that dissenting directors may be absolved from all liability by causing their dissent to be entered at large on the minutes of the directors' meeting. Still other states permit the dissenting directors to exonerate themselves by recording their vote on the minutes, or by notifying some higher authority, or by filing a protest with the corporation's secretary.

21. Directors' Resolutions

Resolutions of the board of directors are distinguished from by-laws in being of a less permanent character and having to do usually with the detailed execution of business affairs rather than with the general plan of organization and methods of procedure. In this respect, too, directors' resolutions are distinguished from stockholders' resolutions, which latter partake more of the nature of by-laws because they deal with matters of fundamental importance and greater permanence. In practice, however, the distinction between by-laws and resolutions has never been drawn with

any degree of precision, so that what may be found provided for in one instance in the resolutions of stockholders may in another instance be taken care of in the by-laws.

Since the powers of stockholders are confined to a relatively few acts, the resolutions of the directors are much more numerous than those of the stockholders. To the directors falls the task of management and of making all corporate contracts. These two functions, management and contracting, indicate in a general way the two great groups into which directors' resolutions fall, viz., those which are concerned with the internal affairs of the corporation and those which concern third parties.

Resolutions of both directors and stockholders are ordinarily passed upon by a formal vote of a quorum of the members. They may be either oral or written, but usage today requires almost invariably that they be written. The rule is that they need not be in writing unless there are statutory or charter provisions to that effect. Fletcher, *Corporations,* p. 4043. The written form of resolutions is sometimes avoided in case of small concerns where the few individuals interested are able to transact business by conversation rather than by formal parliamentary procedure. Where such is the custom the members cannot be required to prove that all measures have been adopted by formal votes. On the other hand, the failure to adopt formal methods of procedure will not be permitted to result injuriously to the rights of third parties. For example, a company cannot avoid a contract on the ground that no record was made of its adoption. There are so many reasons in favor of a written record of all resolutions that every corporation may profitably adopt the plan of carefully reducing all its resolutions to writing and of protecting them against any possibility of destruction.

22. Legal Nature of Resolutions

In general, stockholders' and directors' resolutions are of two types: (1) those concerned with the internal manage-

ment of the company and (2) those which are communicated to outside parties to be acted upon and which therefore become unilateral contracts when so communicated and accepted. Until so communicated they are offers; after being communicated and accepted they are enforceable contracts. In some instances the mere record of a resolution on the minute book is sufficient to make a binding contract to the benefits of which outsiders are entitled. *Hazard* v. *Hope Land Co.*, 96 Atl. 602.

23. Directors' Resolutions Illustrated

It is impossible here to present more than a few of the almost limitless variety of directors' resolutions. As to form, however, these few illustrations will fairly well suffice; while as to subject matter, the exigencies of the occasion must always be the prime consideration.

The simplest form of resolution begins with the introductory expression "Resolved, that" following which is stated the resolution. Thus a resolution authorizing the secretary to secure the necessary account books and other books of record would read somewhat as follows:

Resolved, that the secretary of this company be and is hereby authorized to purchase all books of account and record necessary and proper for the purposes of the company.

Another resolution concerned with the internal management of the company is one filling a vacant office of the corporation, as follows:

Resolved, that Mr. Ernest M. Atkins be and is hereby appointed to fill the position of second vice president of the company, made vacant by the death of Elliot R. Jones, until the next regular meeting of the corporation.

Resolved, further, that his salary be fixed at $500 per month for the period during which he holds office.

Sometimes it is necessary or desirable to state in the resolution the reasons therefor. It is customary to do this by introducing them with a "Whereas," and, following the statement of reason, bringing in the resolution. Suppose, for example, that the president of the company has entered

into certain contracts which action he desires to have ratified by the board of directors:

Whereas, the President has entered into a contract with the Acme Motor Company for the construction of twenty motor trucks for the use of this company, and

Whereas, it is customary for the board of directors to pass upon all contracts of the company involving an expenditure in excess of $1,000,

Resolved, that the said action of the President in making said contract be and is hereby in all respects ratified, confirmed and approved.

The preceding resolutions are of the internal regulatory type. The following two are of the type which involve third parties and which, upon being communicated to such third parties become contracts. The following resolution authorizes the sale of a plant to a third party:

Resolved, that this Board of Directors hereby approve of the sale of Plant number 7, located at Pittsburgh, Pennsylvania, to the Atlas Motor Company, as embodied in the agreement which has been prepared, and

Resolved, further, that we hereby authorize the sale of said Plant number 7 by the President of this Company, under the seal of this Company.

The following resolution authorizes the execution of a mortgage as security on a loan of money.

Whereas, it has become necessary to raise funds for the construction of a new plant and to equip same in order that the company may be enabled to carry on more profitably its increased business, and

Whereas, the condition of the money market is favorable to the flotation of loans secured by mortgage on real property, therefore

Resolved, that the President be and is hereby authorized to execute a mortgage on any and all of the real property of this company, to the John P. Lawrence Trust Company, as trustee, for the protection, security and payment of a loan of $1,000,000, which said trust company agrees to make to this company.

Resolved, that the terms of the mortgage, copy of which is herewith attached and made a part of these resolutions, are hereby agreed upon as satisfactory to this board.

In all cases where mortgages or other contracts are passed upon it is desirable to have them expressly accepted and

embodied in the resolution. The reason for this is that there can then be no question as to whether all the terms thereof are covered in the resolution of acceptance.

Form 144

Waiver of Notice and Consent to Meeting

We, the undersigned directors of the..... Company, a corporation organized under the laws of the State of....., do hereby severally waive notice of the time, place, and object of the special meeting of the Board of Directors of said Company. We also hereby consent that this meeting shall be held at.....on the..... day of....., 19..., at.....o'clock, ...M., and that all such business may be transacted thereat as may legally come before the meeting.

Dated.....19....

.....

.....

.....

Form 145

Notice of Special Meeting of Directors

Dated.....19....

To.....

You are hereby notified that in accordance with the authority invested in me by the By-laws of the..... Company, I hereby call a special meeting of the Board of Directors of.....Company, to be held at ....., on the.....day of....., 19..., at.....o'clock, ...M. The purpose of said meeting shall be to consider and pass upon a proposed contract submitted to us by.....and for the transaction of any other business which may legally be brought before the meeting.

.....

President

FORM 146

NOTICE OF REGULAR MEETING OF DIRECTORS

SECRETARY'S OFFICE
AMERICAN STEEL FOUNDRIES
410 NO. MICHIGAN AVE., CHICAGO, ILL.

Dear Sir:

You are hereby notified that, in accordance with the by-laws of this corporation, a regular meeting of the Board of Directors will be held at the office of the company, Cortlandt Building, No. 30 Church Street, New York City, at eleven o'clock in the forenoon on Thursday.

Yours truly

No.

Secretary.

P. S.—If you will kindly detach and mail promptly in the enclosed stamped envelope the lower part of this sheet, indicating upon it whether you expect to attend the above meeting, it will greatly oblige

Yours truly,

F. E. P.

No.

Mr. F. E. Patterson,
Secretary, Chicago, Ill.

Dear Sir:

I expect to attend the meeting specified in the notice from which this card was detached.

Form 147

Notice of the First Meeting of Directors

Notice is hereby given that the first meeting of the Board of Directors of The.....Company, a corporation organized under the laws of the State of..... will be held at the office of the Company, Number....., ...Street, in the city of....., State of....., at.....o'clock, ...M., 19..... The purpose of said first meeting of the Board of Directors shall be to elect officers for the Company as well as to transact such other business as may be brought before the meeting.

.....
.....
.....
.....
.....

Form 148

Waiver of Notice of First Meeting of Directors

We, the undersigned, being all the directors named in the charter of The.....Company, a corporation organized under the laws of the State of....., do hereby waive notice of the time, place and purpose of the first meeting of the directors of said Company and do hereby fix the..... day of....., 19...., at.....o'clock....M., as the time of said meeting, which shall be held at the office of the Company in the city of....., State of.....

Dated....., 19....

.....
.....
.....

Form 149

Ratification of Proceedings by Directors

We, the undersigned, being all of the directors of The..... .....Company, do hereby ratify and approve all the proceedings which have occurred at this meeting as indicated in

the foregoing transactions and resolutions. To signify such ratifications and approval of all such resolutions and transactions, we hereby sign our names and seals this.....day of ....., 19....

.....(SEAL)
.....(SEAL)
.....(SEAL)

Form 150

Directors' Resolution Appointing General Manager

Resolved, that Mr.....of....., be and is hereby appointed General Manager of..... Company, in accordance with the terms of an agreement which it is proposed shall be made between the..... Company as party of the first part and the said Mr..... as party of the second part, and that the president of the..... .....Company is hereby authorized to execute said agreement accordingly.

Form 151

Directors' Resolution Appointing Auditor

Resolved, that Mr.....of..... be and is hereby appointed auditor of the..... Company for a period of.....years, and that his remuneration shall be.....

Form 152

Directors' Resolution Removing Auditor

Resolved, that Mr.....of..... be removed from the office of auditor of..... Company.

Form 153

Resolution Authorizing Execution of Contract

Resolved, that the president of.....Company be and is hereby authorized to execute a contract in the name

and on behalf of the.....Company with Mr. .....of.....for the (here state objects of contract and refer to detailed specifications thereof which should be on file in the office of the company) price and upon the terms of payment stated in the written proposition submitted by said.....of..... on the.....day of....., 19.....

FORM 154

DIRECTORS' RESOLUTION AUTHORIZING LOAN

Resolved, that the president (or president and treasurer as the case may be, or referring to such other officers as may be required by the by-laws) be and is hereby instructed and authorized to borrow for the purposes of this Company the sum of..... Dollars, and that he is hereby instructed and authorized to duly execute and deliver to the person or persons extending such loan of.....Dollars, bonds of this Company to the amount of.....Dollars par value, payable on....., 19..., and redeemable at any time after....., 19..., at 102 and accrued interest upon 60 days' notice, with interest at..... per cent per annum, payable semi-annually.

In the case of large corporations, it is customary to appoint two external agents known respectively as transfer agent and registrar. Provision for the appointment of such agents by the Board of Directors should be made in the by-laws. Usually trust companies are appointed to these positions. As transfer agent the trust company supervises the transfers of stock and keeps adequate record of all stockholders. Some officer of the trust company acting as registrar countersigns the new certificates issued thus preventing any possibility of over-issue. The following form of resolution may be adapted to appointment of either or both these agents:

FORM 155

DIRECTORS' RESOLUTION APPOINTING REGISTRAR

Resolved, that the.....Company be and is hereby appointed transfer agent for the shares of the capital

stock of this company. *Resolved,* further, that the secretary of this company be and is hereby authorized and instructed to execute and deliver to said.....Trust Company a certificate of the seal of this company authorizing said.....Trust Company to act as transfer agent for the capital stock of this company.

In case of the appointment of a registrar the resolution should direct the secretary to state in his certificate to the trust company or to the registrar the total authorized capital stock of the company, the amount outstanding and the names of the officers of the company who will sign the stock certificates. Transfer agents have certain liabilities and responsibilities in connection with the transfer or refusal to transfer stock. They must have samples of and be familiar with the signatures of the stockholders, and for this reason they should keep files showing such signatures. The reader is directed to the explanation of stock transfers found in another part of this volume.

FORM 156

SECRETARY'S CERTIFICATE TO REGISTRAR

I hereby certify that at a meeting of the Board of Directors of.....Company held at..... on the.....day of....., 19...., a resolution was passed as follows: (Here insert exact copy of resolution.)

The authorized capital stock of the..... Company is.....shares divided into..... shares of preferred stock without par value and..... shares of common stock without par value. Of these authorized issues.....shares of the preferred stock without par value and.....shares of the common stock without par value are at this date outstanding.

Signed and sealed on behalf of the.....Company under the authority of foregoing resolution this.....day of....., 19....

.....

(Seal) *Secretary*

Form 157

Directors' Resolution Accepting Property

Resolved, that this corporation accept the offer of..... to sell to this corporation all property including good will and other intangible assets of the business carried on under the name of.....and....., and furthermore,

Resolved, that the Board of Directors of this corporation hereby declare that the value of said business is Fifty Thousand Dollars ($50,000.00) and that the acquisition of same will be advantageous to this corporation; therefore

Resolved, that the proposed agreement for the sale of said property presented and read at this meeting be and is hereby approved and that the president of this corporation be and is hereby authorized and directed to execute said agreement on behalf of this corporation, to affix the corporate seal thereto, and to issue full paid and non-assessable stock of this Company in satisfaction thereof to the amount of Fifty Thousand Dollars ($50,000.00) as specified in said agreement.

Form 158

Directors' Certificate of Appraisal

Whereas, ...of.....has in writing made an offer to The.....Company, a corporation organized under the laws of the State of....., to sell to said.....Company the property described in "Exhibit A" hereto attached and also to sell to said .....Company the good will and other intangible assets of the.....firm, a concern engaged in the business of manufacturing with plants located at .....

Now, therefore, we, the Board of Directors of said..... Company, do hereby certify that we have made a careful valuation of said property and other intangible assets described in "Exhibit A" and have found same to be of a fair value of..... .....Dollars ($.....).

.....

.....

.....

FORM 159

AFFIDAVIT OF CHANGE IN NUMBER OF DIRECTORS
(MISSOURI)

State of Missouri, }
County of..... } ss.

.....(president or secretary) of the ....., a corporation duly incorporated under the laws of the state of Missouri, being duly sworn, upon his oath states that at a meeting of the stockholders of said corporation, duly called and held on the.....day of....., 19...., the number of directors of said corporation was, by a vote of its stockholders cast as its by-laws direct, changed from .....to.....

.....(President or Secretary).

Subscribed and sworn to before me this.....day of ....., 19..... My term expires....., 19.....

(Seal) ....., Notary Public.

Instructions—Must be recorded in the office of the recorder of deeds of the county in which the corporation is located, and a certified copy thereof filed in the office of the secretary of state. Will not take effect until affidavit is filed in the office of the secretary of state. State's fees for certified copy will be $1.90.

FORM 160

OFFICER'S TENDER OF RESIGNATION

Date.....19....

To the Board of Directors
of.....Company

Sirs:

I hereby tender my resignation as.....of the .....Company, the same to take effect at once (or at such other time as the party wishes his resignation to become effective).

Yours sincerely,

.....

X

BY-LAWS

1. Power to Make By-Laws

The power to make by-laws is one of five powers said to be "necessarily and inseparably incident to every corporation." By-laws are sometimes known as "private statutes." 1 Kyd, *Corp.*, 69. As a rule the power to enact by-laws is expressly provided for in the statutes as well as in the charter, but this is not necessary; for if not so expressly granted it is implied, subject to the general qualification that such by-laws must be neither unreasonable nor unlawful, nor such as to impair the rights of stockholders or of third persons. Clark and Marshall, *Private Corp.*, Art. 637. Neither can by-laws, to be effective, be in any respect contrary to the provisions of the charter. The power of stockholders to regulate the corporation by enactment of by-laws has been somewhat abridged through the inclusion in the statutes themselves of provisions which were formerly regarded as fit subject matter for by-law legislation. Among these are details governing the manner of holding annual meetings, use of proxies, stock transfers, what constitutes a quorum for certain purposes, and so on. Of course by-laws may reaffirm these provisions, but they cannot be in any respect contrary to them.

Neither can a corporation pass by-laws which are contrary to public policy, or which impair the right of a person to sue in the courts. By-laws cannot be in restraint of trade, nor can they alienate property.

A by-law, to be reasonable, must be general, affecting all stockholders alike. Thus a by-law declaring forfeited the stock of one stockholder only for non-payment of assess-

ments is unenforceable; to be enforceable it must affect all stockholders alike. Neither can by-laws grant exemption privileges to certain stockholders while withholding the same from others.

The method of adopting by-laws is sometimes prescribed by statute. If so, such provisions must be closely followed. Thus in Nebraska the statute after specifying the making of by-laws, not inconsistent with any existing law, for the management of the corporation's affairs, provides that a copy of the by-laws, with the names of all the officers of the corporation appended thereto, must be posted in some conspicuous place, at the places of doing business, subject to public inspection. *Comp. Stat. Neb.*, 1922, Sec. 459, 469.

In the absence of contrary provision in the statutes or charter, the power to enact by-laws rests exclusively with the stockholders. Passage of adequate by-law regulations by the stockholders constitutes their most powerful weapon of control in the affairs of the corporation. Nevertheless the power to make the by-laws may be conferred upon the directors by action of the stockholders, by charter provision, or by statute. By common law no such right attaches to the directors. In New York directors may enact by-laws not inconsistent with those enacted by the stockholders. In Illinois, Kentucky and the District of Columbia directors are given the exclusive power of enactment, alteration and repeal of by-laws.

In practice the directors oftentimes exercise great power over the creation of by-laws because they have power to pass such resolutions as are not in conflict with by-laws passed by the stockholders, or with the charter or statutes. In effect, if not in name, such resolutions are sometimes the equivalent of by-laws, remaining in effect until repealed or altered by vote of the stockholders. In some states it is required that the first by-laws be adopted by the directors. These are then subject to repeal, revision or enlargement by the stockholders.

2. Power to Alter or Repeal By-Laws

The power to alter or repeal by-laws is inherent in the same body which makes them, in the absence of statutory provision to the contrary. Although it is customary to reaffirm this right of alteration or repeal in the charter or by-laws, in the absence of specific provisions to the contrary this is unnecessary. In so far as directors are empowered to make by-laws, they may also amend or repeal them in the absence of specific provision to the contrary, but they cannot amend or repeal by-laws which have been passed upon by the stockholders.

The general tests of validity for alteration of by-laws are the same as for original by-laws.

As a general rule a corporation may repeal or alter its by-laws by the same majority vote as that by which it adopted them. If a by-law is passed which is inconsistent with one already passed the latter is impliedly repealed.

Sometimes, however, vested rights arise which would be interfered with were a by-law to be repealed or modified. In such cases the by-law takes on the characteristics of an actual contract between the corporation and the interested parties, and it can be repealed or modified only with due consideration of the effect which such action may have on vested rights of such interested parties. Thus if a by-law is passed and under reliance thereon third parties make certain contracts with the corporation, such by-laws may be regarded as an essential part of such contracts and cannot be repealed to the injury of the third parties. *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159.

In addition, restrictions on the power to alter or repeal may be found in the charter or statute, but such restrictions are unusual. In their absence the vote for alteration or amendment is the same as for the enactment of by-laws in the first instance. Where restrictions are placed upon the power to alter or amend, not effective in the case of the enactment of by-laws in the first instance, such restrictions

are probably not enforceable unless consented to by all the stockholders, or are made a charter provision, or have become so involved in contracts and vested rights that their repeal in the manner of repeal of by-laws is no longer possible.

3. Method of Alteration or Repeal of By-Laws

Whether required or not, written notice should be given all members of the proposal to alter or repeal by-laws. If the meeting is a special one called to consider such alteration or repeal, full details should be given of the things proposed to be voted on. Formalities as to such notification may be prescribed by statute, charter, or by-laws. In any case such requirements should be complied with. In addition to alterations or repeal of by-laws by direct vote, the same result may be accomplished by:

1. Enactment of a new by-law changing or in effect repealing an earlier one.
2. Failure of corporation to act in accordance with a by-law may result in its repeal, if such failure is acquiesced in by the stockholders. Such acquiescence by the stockholders may be inferred in disregard of a by-law by officers or directors if continued so long as to make it evident that they do not intend to make a protest against it.
3. Non-user, i. e., failure to comply with the requirements of a by-law for a sufficiently long time to make it evident that non-compliance has become the custom. Here again the acquiescence of the stockholders must be shown.

4. Purpose of By-Laws

Essentially, by-laws are intended for the internal regulation of corporations. Hence they contain detailed provisions relative to organization as well as to the administration of the routine affairs of the corporation, including usually a statement of the duties of the various officers and sometimes going so far as to include a restatement of certain charter or statutory provisions or both, with a view to bringing them more directly to the attention of all interested parties.

"The office of by-laws is to prescribe rules for the government of the corporation, and to regulate the conduct and define the duties of the members towards the corporation and between themselves." Clark and Marshall, *Private Corp.*, Sec. 639.

The purpose of by-laws can never be to give the corporation additional powers, for powers cannot be so granted in excess of the powers granted to the corporation by the charter; neither can it be to diminish the powers of the corporation. Nevertheless, by-laws may be enacted which prohibit officers from performing acts which are within the powers conferred and the officers are governed accordingly; but such powers, so far as the corporation is concerned, are not ultra vires.

It has been held that where, by the provisions of the charter or of a general statute relating to corporations, the corporation is empowered to make by-laws relating to specified purposes, it cannot make by-laws for other objects than those enumerated. *Ireland* v. *Globe Milling & Reduction Co.*, 19 R. I. 180.

By-laws enacted to explain the status of stockholders in their relation to the corporation cannot impair the obligation of contracts between the corporation and its stockholders or deprive stockholders of vested rights. Neither can a stockholder be deprived of his vested rights under a contract with a third person. For example, a corporation which is not expressly authorized to issue preferred stock cannot do so if a holder of common stock objects. *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159.

5. Tests of Validity of By-Laws

To determine the validity of any particular by-law the following tests should be applied.

(1) *Reasonableness.* By-laws must not be contrary to public policy. It is a rule of law, however, that where by one construction a by-law is in conflict with the law it will not be held invalid if by another construction it can be

sustained. *Kahn* v. *Bank of St. Joseph,* 70 Mo. 262. If a by-law is to be proven unreasonable in its operation upon stockholders, objection to it must be brought by a stockholder, not by a third party. *Am. Live Stk. Exch. Com. Co.* v. *Chi. Live Stk. Exch.,* 143 Ill. 210.

As noted elsewhere, by-laws to be reasonable must be general.

(2) *Legality.* By-laws must not be contrary to the law of the state of incorporation. As to the common law, by-laws need not be in conformity thereto, so long as they are reasonable and not contrary to the statutes of the state. *Com.* v. *Detwiller,* 131 Pa. St. 614.

(3) *Consistency with Charter.* By-laws must be consistent with the corporation charter, otherwise they are void. If the charter vests the management of the corporation's business in the board of directors, a by-law vesting it in an executive committee is void. *Tempel* v. *Dodge,* 89 Tex. 68.

In no case can a by-law expand upon the granted and implied powers of the corporation; neither can it detract from them.

(4) *Vested Rights of Stockholders.* By-laws which impair vested rights of stockholders are void. The contracts already existing between corporation and stockholders cannot be disturbed. Thus a by-law impairing a stockholder's right to vote at corporate meetings would deprive him of vested rights, hence would be void. This would not be the case, however, if at the time he became a stockholder the company expressly reserved the power to subsequently pass by-laws affecting his status as a stockholder. Thus under a life insurance contract issued by a mutual company expressly providing that such contract should be subject to any by-laws passed thereafter, it was held that the party insured was bound by a subsequent by-law which provided that policies of suicides should be forfeited. *Supreme Commandery, K. G. R.* v. *Ainsworth,* 71 Ala. 436.

(5) *Manner of Adoption.* To be valid by-laws must be enacted in the manner prescribed in the statutes or in the charter of the corporation. Where full power to enact by-laws is vested in the stockholders, they may be adopted by a majority vote of the stockholders. If, however, a larger vote is required by statute or by the charter such requirement must be followed. The charter might, in the absence of statutory provision to the contrary, vest the power to enact by-laws in the president and the board of directors. At a meeting at which by-laws are to be voted upon a majority constitutes a quorum in the absence of contrary statutory or charter provision, and a majority vote of those present is sufficient in the absence of contrary provision.

By-laws must be adopted at a meeting called and conducted in accordance with the requirements of statutes and charter. Such adoption need not be under seal or in writing unless so required by statute or charter. Insufficient notice of a special meeting at which by-laws are to be voted on will invalidate by-laws passed thereat. *Mutual Fire Ins. Co.* v. *Farquhar,* 86 Ind. 668. As a rule by-laws may be passed at a general meeting without previous notice, but there are exceptions to this rule as in Pennsylvania, where notice has been held to be necessary. *Bagley* v. *Reno, etc., Co.,* 201 Pa. St. 78. Such notice may be required by statute, charter, or by-laws, and in any event due written notice should be given regardless of such requirements.

It goes without saying that statutory and charter requirements relative to enactment of by-laws must be followed. Some states require that by-laws must be passed a certain length of time before the day appointed for election of directors—in Missouri, for example, 60 days before. The majority vote necessary to enact by-laws may be prescribed by statute or charter.

By-laws which have been used and regarded as such over a term of years are to be considered as valid even though there were irregularities in the method of their adoption. It is not even necessary that they be adopted in written form

or by a formal vote. *Germania Iron Mining Co.* v. *King,* 94 Wis. 439.

6. Validity of Particular By-Laws

(1) *By-Laws Void in Part.* A by-law may be valid as to one part and invalid as to another part, providing the part which is valid is capable of enforcement without enforcing the objectionable part. A by-law of a mutual insurance company contained an invalid provision affecting the jurisdiction of courts in actions for losses, and a valid provision respecting the time within which actions must be brought. The first provision was held invalid, the second was given effect. *Amesbury* v. *Bowditch Mut. Fire Ins. Co.,* 6 Gray (Mass.) 596.

If, however, for purposes of enforcement, such division between valid and invalid parts cannot be made, the by-law will be held void in its entirety. *State* v. *Curtis,* 9 Nev. 325.

(2) *By-Laws Regulating Activities of Officers and Stockholders.* It being the function of by-laws to regulate the conduct and define the duties of officers and other members of the corporation, by-laws enacted for that purpose are, in general, valid. They must, of course, be reasonable, and not run contrary to statutes or charter. Among the things to be so regulated are:

(*a*) Time and place of holding stockholders' and directors' meetings, and the manner in which such meetings may be called.

(*b*) Manner of voting at stockholders' meetings, provided again that the requirements of law and charter are met. A stockholder's right to vote by virtue of his contract with the corporation must not be infringed. By such by-laws stockholders may be privileged to vote by proxy; also stockholders may be empowered to cast one vote for each share of stock owned, instead of being granted but one vote as is the rule under the common law.

(*c*) The qualifications of directors may be prescribed, as well as those of other officers of the corporation; also the duration of their official terms and the time and manner

of electing or appointing them, as well as the manner of their removal. Their powers and duties may be prescribed. Bond may be required of certain officers for the faithful performance of duties. The time and manner of holding directors' meetings may be prescribed, as well as the number of directors necessary to constitute a quorum.

(3) *By-Laws Regulating Stock Transfers.* The transfer of stock from stockholder to stockholder may be regulated by by-law. The transfer of stock cannot be prohibited, however, unless expressly authorized; neither can stock transfers be unreasonably restricted.

(4) *By-Laws in Restraint of Trade.* A by-law in restraint of trade is invalid unless expressly authorized by the charter or by statute.

(5) *Forfeiture of Shares for Nonpayment of Assessments.* Unless authorized by statute or charter, by-laws cannot be enacted providing for the sale or forfeiture of shares because of the nonpayment of assessments thereon.

(6) *Liens on Stockholders' Shares.* It is generally held that a corporation may by by-law create liens on stockholders' shares for nonpayment of debts due the corporation. Such liens are good as against purchasers of shares who have notice of such by-laws.

(7) *Issuance of Preferred Stock.* A by-law cannot be made by a majority of common stockholders authorizing the issuance of preferred stock, if any common stockholder dissents, since this would impair his contract as a common stockholder. If there exists statutory authority for the issuance of preferred stock such a by-law would be valid, or it would be valid if assented to by all of the common stockholders.

(8) *Stock Assessments.* In the absence of statutory or charter authority, by-laws cannot be enacted compelling a dissenting stockholder to pay assessments upon his stock additional to those which he contracted to pay when he purchased it.

(9) *Increase of Capital Stock.* This can be accomplished

by by-law enactment only when the corporation is specifically authorized to do so by statute.

(10) *Inspection of Corporation Books.* By-laws making reasonable regulations for the inspection of the corporate records are in order, but they must not prohibit such inspection or impose unreasonable restraints.

7. Void By-Laws as Effective Contracts

By-laws which are void as such because not enacted according to specific requirements, or for other reason, may nevertheless become valid contracts as between consenting parties. As said in *Blue Mt. Assn.* v. *Barrowe,* 71 N. H. 69, "a void by-law may become a valid contract." In such cases the point at issue is no longer the validity of the by-law as such, but whether the stockholders who did assent to it have, by their later actions, assented to its provisions and are therefore estopped from denying its validity as a contract. *Weiland* v. *Hogan,* 177 Mich. 626, 631.

FORM 161

BY-LAWS OF AMERICAN STEEL FOUNDRIES
AS AMENDED JULY 7, 1927

ARTICLE I

STOCKHOLDERS

SEC. 1. *Annual Meeting.* A meeting of the Stockholders of the Company shall be held annually at the principal office of the Company, in the State of New Jersey, at the hour of 12 o'clock noon, on the first Thursday following the third Monday in March in each year after 1911, if not a legal holiday; and if a legal holiday then on the next succeeding Thursday not a legal holiday, for the purpose of electing Directors and for the transaction of such other business as may be brought before the meeting.

SEC. 2. *Special Meetings.* Special meetings of the stockholders may be called by the Board of Directors. Such special meetings shall be held at the principal office of the Company in the same manner as the annual meeting.

SEC. 3. *Notice.* Notice of the annual and of any special meet-

ings of the stockholders shall be given by the Secretary in one of the following methods:

(*a*) By publishing notice thereof once a week for four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, New Jersey; New York, New York, and Chicago, Illinois, or

(*b*) By mailing notice in a postage prepaid envelope addressed to each stockholder at the address left by him with the Secretary of the Company, or at his last known address, at least ten days previous to the time fixed for such meeting. A failure to publish or mail notice of the annual meeting or any irregularity therein shall not invalidate the proceedings of that meeting. All or any of the stockholders may waive notice of any meeting. Meetings of the stockholders may be held at any time and for any purpose, without notice, when all of the stockholders are present in person or by proxy.

SEC. 4. *Quorum.* At all meetings of the stockholders the holders of a majority of all the shares of the capital stock of the Company entitled to vote, present in person or by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and, in that case, the representation of the number so required, shall constitute a quorum. In the absence of a quorum, the stockholders present or represented at the time and place at which a meeting shall have been called, may adjourn from time to time until a quorum shall be present, and at such adjourned meeting any business may be transacted which might have been acted upon at the meeting as originally called.

SEC. 5. *Organization.* The Chairman of the Board of Directors and in his absence the President of the Company shall call meetings of the stockholders to order and shall act as chairman of such meetings. The Board of Directors may appoint any stockholder to act as chairman of any meeting in the absence of the Chairman or President. The Secretary of the Company shall act as Secretary at all meetings of the stockholders, and, if he be absent, the presiding officer may appoint a Secretary for such meeting.

SEC. 6. *Voting.* At all meetings of the stockholders, each stockholder entitled to vote shall be entitled to vote in person or by proxy appointed by an instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name. At each meeting of the stockholders a full, true and complete list, in

alphabetical order, of all the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the Secretary or by the Treasurer, shall be furnished. Only the persons in whose names shares of stock stand on the books of the Company twenty days before the date of any meeting of the stockholders, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

SEC. 7. *Inspectors.* At each meeting of the stockholders the polls shall be opened and closed; the proxies and ballots shall be received and taken in charge, and all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes shall be decided by three inspectors. Such inspectors shall be appointed by the Board of Directors before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer. If, for any reason, any of the inspectors previously appointed shall fail to attend or refuse or be unable to serve, inspectors in place thereof shall be appointed in like manner.

ARTICLE II

BOARD OF DIRECTORS

SEC. 1. *Number, Classification and Term of Office.* The business and property of the Company shall be managed and controlled by its Board of Directors. The Board of Directors shall consist of twelve members; but the number of Directors may be altered from time to time by the alteration of these by-laws.

As provided in the certificate of incorporation, the Directors shall be classified in respect of the time for which they shall severally hold office, by dividing them in three classes, each consisting of one-third of the whole number of the Board. The Directors of the first-class shall be elected for a term of one year; the Directors of the second-class for a term of two years, and the Directors of the third-class for a term of three years. At each annual election, the successors to the Directors of the class whose term shall expire in that year, shall be elected to hold office for the term of three years, so that the term of office of one class of Directors shall expire in each year.

In case of any increase in the number of Directors, the additional Directors shall be elected by the Directors then in office, or by the stockholders, at an annual or special meeting, and one-third of such additional Directors shall be elected for the unexpired portion of the term of one year, one-third for the unex-

pired portion of the term of two years, and one-third thereof for the unexpired portion of the term of three years, so that each class of Directors shall be increased equally.

Each Director shall serve for the term for which he shall have been elected, and until his successor shall have been duly chosen.

Sec. 2. *Vacancies.* In case of any vacancy in the Directors of any class through death, resignation, disqualification or other cause, the remaining Directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant, and until the election of his successor.

Sec. 3. *Place of Meeting.* The Directors may hold their meetings, and may have an office, and keep the books of the Company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey, or outside the State of New Jersey, as the Board from time to time may determine.

Sec. 4. *Annual Meetings.* Annual meetings of the Board of Directors shall be held without notice at the office of the Company in the City of New York, at half past two o'clock in the afternoon of the same day on which the stockholders' annual meetings are held.

Sec. 5. *Regular Meetings.* Regular meetings of the Board of Directors shall be held monthly on the first Thursday of each month in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding Thursday not a legal holiday, at eleven o'clock in the forenoon, in the City of New York, unless otherwise specially ordered in advance by vote of the Board of Directors as to any particular meeting.

Sec. 6. *Special Meetings.* Special meetings of the Board of Directors shall be held whenever called by the President or by one-third of the Directors for the time being in office.

Sec. 7. *Notice of Meetings.* Notice of each regular or special meeting of the Board shall be given by the Secretary to each member of the Board by posting the same in a postage prepaid envelope, addressed to each member of the Board of Directors at his residence or place of business, at least two days before the meeting. The notice of a special meeting shall state the objects of the meeting and the business of the meeting shall be confined to the objects stated. All or any of the Directors may waive notice of any meeting, regular or special. Meetings of the Board may be held at any time and for any purpose, without notice, when all of the members of the Board are present.

Sec. 8. *Quorum.* Six Directors at a regular or special meeting shall constitute a quorum for the transaction of business; but a

less number may adjourn the meeting from time to time until a quorum shall be present.

SEC. 9. *Contracts.* Inasmuch as the Directors of this Company are interested in other business pursuits and are likely to be connected with other corporations with which this Company, from time to time, must have business dealings, no contract or other transaction between this Company and any other corporation shall be affected by the fact that the Directors of this Company are interested in, or are directors or officers of, such other corporation, if, at the meeting of the board or committee making, authorizing or confirming such contract or transaction, there shall be present a quorum of directors not so interested; and any director individually may be a party to, or may be interested in, any contract or transaction of this Company, provided that such contract or transaction shall be approved or be ratified by the affirmative vote of at least a majority of the directors not so interested.

The Board of Directors may submit any contract or act for approval or ratification at any annual meeting of the stockholders, or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the capital stock entitled to vote which is represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders shall be there represented in person or by proxy) shall be as valid and binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation.

SEC. 10. *Compensation.* For his attendance at any meeting of the Board of Directors, every Director not otherwise in the pay of the Company shall receive for attendance at each meeting the sum of $50 and Directors not residing at the place of meeting shall be entitled to receive in addition all reasonable traveling and hotel expenses for attendance at such meeting.

ARTICLE III

OFFICERS

SEC. 1. *Appointment and Tenure.* The officers of the Company shall be a Chairman of the Board of Directors, a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and a Comptroller, all of whom shall be elected by the Board of Directors. The powers and duties of the Secretary and Treasurer may be exercised and performed by the same person.

The Board of Directors may appoint such other officers as they shall deem necessary with such powers and duties as from time to time may be prescribed by the Board.

All officers and agents shall be subject to removal at any time by an affirmative vote of a majority of the Board. All officers, agents and employees, other than officers appointed by the Board, shall hold office at the discretion of the Board or of the officer appointing them.

SEC. 2. *The President.* In the absence of the Chairman of the Board of Directors the President shall preside at all meetings of the stockholders and of the Board of Directors. Subject to the Board of Directors he shall have general charge and supervision of the business of the company and its several officers. He shall also have power to appoint all necessary officers and employees of the Company, except those selected by the Board of Directors, and may remove such officers or employees, except those selected by the Board of Directors, whenever he shall deem it necessary and may make new appointments to fill the vacancies. He shall have authority to countersign checks, drafts and orders for the payment of moneys executed by the Company in the usual course of its business. He shall have authority to suspend any of the officers or heads of departments until the Board of Directors shall be convened, and to dismiss any of the subordinate employees whenever he shall think fit and proper to do so. In the event of the death, disability or more than temporary absence of the President, the Board of Directors may designate any person as acting President, who shall for the time be invested with all the powers and required to perform all the duties of the President. Such person shall be known as the Acting President of the Company.

SEC. 3. *Vice-Presidents.* The Vice-Presidents may countersign certificates of stocks, checks, drafts and orders for the payment of money, executed by the Company in the usual course of its business, and they shall be vested with such other powers and perform such other duties as may from time to time be prescribed by the Board of Directors or President.

SEC. 4. *The Treasurer.* Subject to the control and supervision of the Board of Directors, and such executive officer as the Board of Directors may provide, the Treasurer shall have charge of the funds, receipts and disbursements of the Company. He shall see to the collection of all accounts, bills receivable and other demands owing to the Company. He shall be the custodian of all securities, notes and evidences of indebtedness belonging to the Company. He shall keep full and accurate books of account showing all the receipts and disbursements of the Company. He shall furnish to

the President, and Board of Directors, on demand, a detailed account of the receipts and expenditures of the corporation for any specified period, and his books and papers shall at all times be open and subject to the inspection and scrutiny of the President and Board of Directors or their appointees. He shall render to the President or Board of Directors, whenever required, a statement of all his transactions as Treasurer, and of the financial condition of the Company.

He shall give to the Company a bond in such sum as the Board of Directors shall require, which bond shall be an undertaking of a surety company in such form and containing such provisions as shall be approved by the Board of Directors. The premiums of the surety company for furnishing such bond shall be paid by the Company.

He may sign checks, drafts, and orders for the payment of money executed by the Company in the usual course of its business, and may endorse on behalf of the Company, checks, drafts and orders for the payment of money which it may receive in the usual course of its business.

All checks, drafts and funds of the Company shall be deposited by the Treasurer from time to time in such banks, trust companies or depositaries as may from time to time be determined by the Board of Directors.

SEC. 5. *Assistant Treasurers.* The Assistant Treasurers shall have power to sign checks, drafts and orders for the payment of money issued by the Company in the usual course of its business, and to endorse checks, drafts and orders for the payment of money which may be received by the Company in the usual course of its business. They shall perform such other duties as may from time to time be prescribed by the Board of Directors.

In the absence or disability of the Treasurer, they shall be vested with all his powers and required to perform all his duties.

They shall furnish to the Company a bond of a surety company in such amount as the Board of Directors may require, in all respects similar in form to that required of the Treasurer; and the premiums of the surety company for furnishing such bonds shall be paid by the Company.

SEC. 6. *Secretary.* The Secretary shall record all the votes and proceedings of the Stockholders and Directors in a book kept for that purpose. He shall attend all meetings of the Stockholders and Directors. He shall keep in custody the seal of the Company, and when authorized by the Board of Directors, or when any instrument requiring the corporate seal to be attached shall have first been signed by the President, or a Vice-President, duly author-

ized to sign the same, affix it to such instrument, which seal shall always be attested by his signature. He shall have charge of all the books and papers of the Company which properly belong to his office, and shall perform such other duties as pertain to his office, or as the Board of Directors may require.

He shall keep the accounts of stock registered and transferred in such manner and form and under such regulations as the Board of Directors may prescribe.

SEC. 7. *Assistant Secretaries.* The Assistant Secretaries shall, in the order of their appointment, be vested with all the powers and required to perform all the duties of the Secretary in the event of his absence or disability. They shall perform such other duties as shall be from time to time prescribed by the Board of Directors.

SEC. 8. *Comptroller.* The Comptroller shall be the principal officer in charge of the accounts of the Company, and shall perform such duties as from time to time may be prescribed by the Board of Directors.

SEC. 9. *Chairman of the Board.* The Chairman of the Board shall act in an advisory capacity to the President and other officers of the Company, and shall preside at the meetings of the Stockholders and Directors and shall have such other powers as from time to time shall be conferred upon him by the Board of Directors.

ARTICLE IV

CONDUCT OF BUSINESS

SEC. 1. *Contracts.* No agreement or contract, other than a check or draft, involving the payment of money or the credit or liability of the Company, shall be made without the approval of the Board of Directors, except that the President or a Vice-President discharging his duties, may, in the ordinary course of the business of the Company, make contracts or obligations not involving a liability in excess of $50,000.

All contracts, deeds and other instruments that require the corporate seal of the Company to be affixed shall be signed by the President or Vice-President and by the Secretary or an Assistant Secretary.

SEC. 2. *Checks and Drafts.* All checks, drafts and other negotiable instruments which shall be issued by the Company shall be signed by the Treasurer or an Assistant Treasurer, and countersigned by the President or a Vice-President, or by such other officer or officers as the Board of Directors may designate; Provided, however, that checks, drafts or other negotiable instruments

shall not be both signed and countersigned by the same person.

SEC. 3. *Voting upon Stocks.* Unless otherwise ordered by the Board of Directors, the President shall have full power and authority in behalf of the Company to attend and to act and to vote at any meetings of stockholders of any corporation in which the Company may hold stock, and at any such meeting shall possess and may exercise any and all the rights and powers incident to the ownership of such stock and which, as the owner thereof, the Company might have possessed and exercised if present. The Board of Directors, by resolution from time to time, may confer like powers upon any other person or persons.

ARTICLE V

CAPITAL STOCK

SEC. 1. *Certificates of Shares.* The certificates for shares of the capital stock of the Company shall be in such form, not inconsistent with the certificates of incorporation, as shall be approved by the Board of Directors. The certificates shall be signed by the President or a Vice-President, and also by the Treasurer or an Assistant Treasurer, and shall not be valid unless so signed, but where such certificates are signed by a Transfer Agent and a Registrar, the signatures of any such President or Vice-President and Treasurer or Assistant Treasurer may be facsimiles. All certificates shall be consecutively numbered and the name of the person owning the shares represented thereby, with the number of such shares and the date of the issue, shall be entered on the Company's books.

All certificates surrendered to the Company shall be cancelled, and no new certificates shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and cancelled.

SEC. 2. *Transfers of Shares.* Shares of the capital stock of the Company shall be transferred on the books of the Company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

SEC. 3. *Regulations.* The Board of Directors shall have power and authority to make all rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates for shares of the capital stock of the Company.

The Board of Directors may appoint a Transfer Agent and a Registrar of Transfers, and may require all stock certificates to bear the signature of such Transfer Agent and Registrar of Transfers.

SEC. 4. *Closing of Transfer Books.* The stock transfer books

may, in the discretion of the Board of Directors, be closed for the meetings of the stockholders, and for the payment of dividends, during such period as from time to time may be fixed by the Board of Directors, and during such period no stock shall be transferable.

ARTICLE VI

DIVIDENDS AND WORKING CAPITAL

SEC. 1. The fiscal year of this Company shall begin on the first day of January and end on the last day of December in each year, except that the period from August 1st, 1910 to December 31st, 1911 inclusive shall be considered and treated as a fiscal year.

SEC. 2. The Board of Directors may declare dividends from the surplus or net profit of the Company. The dates for the declaration of dividends upon the stock of the Company shall be the days fixed by these by-laws for the regular meetings of the Board of Directors in the months of January, February, March, April, May, June, July, August, September, October, November and December in each year, on which days the Board of Directors in its discretion shall declare what, if any, dividends shall be declared.

SEC. 3. The dividends when so declared shall be payable as and when the Board of Directors may from time to time fix and determine.

SEC. 4. The Directors shall not be required in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and to pay the same to such stockholders on demand; but the Board of Directors may fix a sum which may be set aside or reserved, over and above the Company's capital paid in, as a working capital for the Company, and from time to time they may increase, diminish and vary the same in their absolute judgment and discretion.

ARTICLE VII

CORPORATE SEAL

SEC. 1. The Company's corporate seal is, and until otherwise ordered by the Board of Directors shall be, an impression upon paper or wax, bearing the words: "American Steel Foundries, Corporate Seal, N. J., 1902."

ARTICLE VIII

AMENDMENTS TO BY-LAWS

SEC. 1. These by-laws may be altered, amended or repealed at any meeting, regular or special, by the affirmative vote of a majority of the whole Board of Directors; or by the affirmative vote of a quorum of the Board if such proposed amendment, alteration or repeal shall have been specified in the notice calling the meeting; and by the stockholders at any annual meeting or at any special meeting if notice of such proposed alteration, amendment or repeal shall have been included in the notice of the meeting.

FORM 162

BY-LAWS OF THE GENERAL ELECTRIC COMPANY

ARTICLE I

The principal place of business of this Company shall be at the City of Schenectady, in the County of Schenectady, State of New York. There shall also be an office or place of business in the City of New York, and in such other places, in the State of New York, as the Board of Directors may determine.

ARTICLE II

OFFICERS

The officers of this Company shall consist of a President and two or more Vice-Presidents, a Secretary and Assistant Secretaries, a Treasurer and Assistant Treasurers, and such other officers as the Board of Directors may from time to time determine. No officer except the President need be a member of the Board of Directors.

The Directors may at any meeting duly called elect from their own number a Chairman of the Board, whose duties shall be determined by the Board.

In case of the absence or disability of the President, or if his office shall at any time become vacant, the Chairman of the Board, or one of the Vice-Presidents, may be vested with authority by the Board to have and exercise all the powers of the President during such absence or disability, or until the vacancy in the office of the President shall be filled.

The Vice-Presidents shall exercise such powers and perform such duties as the Board of Directors may from time to time direct, or as may be temporarily assigned to them by the President.

ARTICLE III

DIRECTORS AND COMMITTEES

The stock, property and affairs of this Company shall be managed by a Board of Directors consisting of twenty members. The Directors shall be elected annually, at a meeting of the stockholders, to be held on the second Tuesday in May of each year, in the City of Schenectady, or in such other place in the State of New York as the Board of Directors may seasonably appoint. The Board of Directors may appoint committees, standing or special, from time to time, from among their number, or otherwise, and confer powers on such committees and revoke such powers and terminate the existence of such committees at pleasure. Nine members of the Board shall constitute a quorum for the transaction of business.

ARTICLE IV

EXECUTIVE COMMITTEE

SECTION 1. The Board of Directors may appoint an Executive Committee of three or more Directors to be chosen by the Board, who shall serve during the pleasure of the Board. Vacancies in such Executive Committee shall be filled by the Board of Directors.

SECTION 2. The Executive Committee shall have and exercise, subject to the control of the Board of Directors, all powers of the Board requisite for the conduct, management and development of the Company's business as the same may from time to time be delegated, either generally or specially, by the Board of Directors. It may fill vacancies among the officers of the Company. Three members of the Executive Committee shall be a quorum for the transaction of business, and the Committee shall at all times act by a vote of a majority of those present at a meeting at which there is a quorum. The Executive Committee may hold its meetings at any place which it may find convenient.

ARTICLE V

PRESIDENT

The President shall be chosen by the Directors from their own number, for the first year, and at their first meeting after their election in each year.

In the absence of the Chairman of the Board he may preside at all meetings of the Directors, and he may call any meeting of the Board of Directors. He may at his discretion attend any meeting of the Executive Committee, or any other committee of the Board, whether or not a member of such committee.

All certificates of stock and all contracts and obligations of the Company shall be signed by him, except as the Board of Directors or the By-laws of the Company shall, from time to time, authorize and direct other officers permitted by law so to do, to sign such certificates of stock, contracts or obligations.

He shall have general management, subject to the control of the Board of Directors, of the business of the Company, including the appointment of all officers and employees of the Company, for whose election or appointment no other provision is made in these By-laws; and shall have the power, at any time, to discharge or remove any officer or employee of the Company, subject to the action thereon of the Board of Directors, and shall perform all other duties appertaining to his office.

ARTICLE VI

SECRETARY AND ASSISTANT SECRETARIES

The Secretary shall be elected by the Board of Directors, at or after organization, and at their first meeting after their election in each year. He shall record the minutes of the meeting of the stockholders of the Company in proper books to be kept for that purpose, and shall have the custody and care of the seal, records, minutes and stock-books of the Company. He shall attend to the giving and serving of all notices of the Company, and keep, or cause to be kept, a suitable record of the addresses of stockholders and do such other things as may, from time to time, be directed by the Board of Directors.

The Board of Directors may also appoint an Assistant Secretary, who shall perform such duties as may be assigned to him by the Board of Directors, and who shall, in case of the absence or disability of the Secretary, possess all his powers.

ARTICLE VII

TREASURER AND ASSISTANT TREASURERS

The Treasurer shall be elected by the Board of Directors at or after organization, and at their first meeting after their election in each year. He shall be responsible for the care, safe keeping and custody of all the funds and securities of the Company, and he shall perform such duties, in his office, as may be imposed upon him by the Board of Directors, and in such manner as they may direct from time to time. He shall give bond for the faithful discharge of his duty in such sum and with such sureties as the Directors may determine.

The Board of Directors may also appoint Assistant Treasurers,

Board may seem advisable. Notice of such meeting shall be given to the stockholders in the manner hereinbefore provided at least ten days before the day of the meeting.

ARTICLE XII

EXAMINATION OF BOOKS

The Board of Directors may, by resolution, make regulations respecting the examination of the books of the Company by stockholders.

ARTICLE XIII

MEETINGS OF DIRECTORS

SECTION 1. Special meetings of the Directors may be held at any time by order of the Chairman of the Board of Directors, or in the absence of the Chairman, by order of the President, or upon the written direction of two of the Directors.

SECTION 2. Written notice of all meetings shall be mailed to each Director at his residence or place of business at least two days before the meeting, but the said two days' notice in writing may be waived by the written consent of all the Directors, or in the case of any Director, by his particular written consent. Such meetings may be held at any authorized place designated by the Board of Directors, from time to time. The Board of Directors may, by resolution, fix the time or times when regular meetings of the Board shall be held.

SECTION 3. The Board of Directors may prescribe an order of business for its own meetings, or the meetings of the stockholders.

ARTICLE XIV

REMOVAL OF OFFICERS AND EMPLOYEES

SECTION 1. Any officer or employee of the Company may be at any time removed by the affirmative vote of at least a majority of the Board of Directors. In case of such removal the officer so removed shall forthwith deliver all the property of the Company in his possession, or under his control, to some person to be designated by the Board. Nothing herein contained shall limit the power of any officer to discharge any subordinate.

SECTION 2. The Board may at any time, in the transaction of business, temporarily delegate any of the duties of the Vice-Presidents, Secretary, Assistant Secretary, Treasurer, Assistant Treasurers or Comptroller, or either of them respectively, to any other officer or person selected by it.

SECTION 4. Prior to each annual election of a Board of Directors by the stockholders, three Inspectors of Election shall be appointed by the Board of Directors of the Company, or by the stockholders at the meeting in case such Inspectors shall not have been appointed or shall fail to be present. The Secretary of the Company shall furnish the Inspectors with the list of stockholders, prepared by him in accordance with the requirements of Section 1 of this article, and a duplicate of this list, also to be prepared by him, shall be subject to the inspection of any stockholder who may be present at such election, during the whole time the meeting is in progress. The polls for the reception of votes shall remain open at least one hour. The inspectors shall receive the votes, shall canvass them immediately after the polls are closed, and shall thereupon declare the result and certify the same in writing to the Secretary of the Company.

ARTICLE XI

STOCK AND TRANSFER

SECTION 1. Certificates of stock, signed by the President or a Vice-President and the Secretary or Treasurer, shall be issued to the stockholders.

SECTION 2. The stock shall be transferable only upon the books of the Company, by the holder thereof, in person, or by properly authenticated power of attorney.

SECTION 3. The Board of Directors or Executive Committee may appoint suitable agents in the City of New York, and also in the City of Boston, to facilitate transfers by stockholders under such regulations as the Board may from time to time prescribe. The transfer books may be closed by the Board for such period as may be deemed advisable for dividend or other purposes.

SECTION 4. The Board of Directors or Executive Committee may appoint a Bank or Trust Company in the City of New York or Boston, or both, to act as registrar of transfers of stock until otherwise ordered by the Board of Directors. After the appointment of any such registrar of transfers no certificate thereafter issued for stock shall be binding upon the Company, or have any validity, unless counter-signed by such registrar of transfers, or by the successor of such registrar appointed by the Board of Directors.

SECTION 5. The Board of Directors may make such other and further regulations, with reference to the stock and its transfer, as to them may seem advisable from time to time.

SECTION 6. The Board of Directors may call a meeting or meetings of stockholders for the purpose of authorizing an increase of the stock of this Company, at such time or times as to the

Board may seem advisable. Notice of such meeting shall be given to the stockholders in the manner hereinbefore provided at least ten days before the day of the meeting.

ARTICLE XII

EXAMINATION OF BOOKS

The Board of Directors may, by resolution, make regulations respecting the examination of the books of the Company by stockholders.

ARTICLE XIII

MEETINGS OF DIRECTORS

SECTION 1. Special meetings of the Directors may be held at any time by order of the Chairman of the Board of Directors, or in the absence of the Chairman, by order of the President, or upon the written direction of two of the Directors.

SECTION 2. Written notice of all meetings shall be mailed to each Director at his residence or place of business at least two days before the meeting, but the said two days' notice in writing may be waived by the written consent of all the Directors, or in the case of any Director, by his particular written consent. Such meetings may be held at any authorized place designated by the Board of Directors, from time to time. The Board of Directors may, by resolution, fix the time or times when regular meetings of the Board shall be held.

SECTION 3. The Board of Directors may prescribe an order of business for its own meetings, or the meetings of the stockholders.

ARTICLE XIV

REMOVAL OF OFFICERS AND EMPLOYEES

SECTION 1. Any officer or employee of the Company may be at any time removed by the affirmative vote of at least a majority of the Board of Directors. In case of such removal the officer so removed shall forthwith deliver all the property of the Company in his possession, or under his control, to some person to be designated by the Board. Nothing herein contained shall limit the power of any officer to discharge any subordinate.

SECTION 2. The Board may at any time, in the transaction of business, temporarily delegate any of the duties of the Vice-Presidents, Secretary, Assistant Secretary, Treasurer, Assistant Treasurers or Comptroller, or either of them respectively, to any other officer or person selected by it.

ARTICLE XV

GENERAL POWERS

In respect to things not herein specially provided for, the Board of Directors may exercise the powers conferred on them by the Act incorporating this Company.

ARTICLE XVI

AMENDMENT OF BY-LAWS

These By-laws may be altered, amended or repealed, at any time, in the manner provided in the Charter of this Company.

THE HANDBOOK OF CORPORATE MANAGEMENT AND PROCEDURE

PART II

FINANCE

XI

RULES GOVERNING CORPORATE FINANCING

SOURCES OF INVESTED CAPITAL

CAPITAL invested in a business may be derived from any or all of the following sources:

1. Sale of capital stock
2. Retained earnings
3. Short-term loans, including accounts payable
4. Long-term loans, usually in form of funded debts

The amount derived from each of these sources should be set out on the liability side of the balance sheet. In a given business various factors determine the amounts of capital derived from the various sources, but the characteristics are not as obvious as are those usually found on the asset side of the balance sheet. *The amount obtainable through current borrowings is determined by the amount and condition of the current assets. Funds secured from sale of stocks and bonds supply the requisite working capital and additions to plant.*

The manner in which capital is to be invested is determined partly by the sources from which it is secured. Nevertheless in case of industries having similar investments in assets funds are frequently derived from the various sources in quite different proportions. This is because of variations in financial policy.

By capitalization is meant the equity or division of ownership in assets. When there are no liabilities the equity of the stockholders equals the amount of all assets. When there are liabilities the equity is divided between creditors and stockholders. Capitalization should indicate the interest of each class of owners and creditors.

1. Financial Responsibility of Management

Financial responsibility of management is two-fold:

1. For securing required funds
2. For investing such funds economically

If excessive capital is invested in given assets the competitive status of the business is weakened. Competition governs investing of funds as well as merchandising. Inefficient investing of funds reduces net earnings by increasing overhead costs.

Careless investment of funds in capital assets is dangerous because liquidation of the investment without great loss is difficult. If capital assets are financed by sale of stock or bonds, the return on stockholders' investments is decreased if the investment is not really needed.

2. Sources of Funds

The investing of funds requires consideration of:

1. Sources of the funds
2. Division of funds as between current and capital assets
3. Treatment of funds invested in capital assets
4. Treatment of funds invested in current assets

One source of funds is the sale of capital stock. "Capital Stock" has reference to the amount subscribed and paid in, or contracted to be paid in, by a corporation's stockholders, in money, property, labor or services either at the time of organization or afterwards, with which in addition to funds derived from other sources, the corporation carries on operations.

The amount of funds to be secured from sale of capital stock and bonds respectively, depends on the financial plan adopted. This plan must be suited to the character of the enterprise. Usually a banker assumes responsibility for the plan and works out its details. In promoting an enterprise, four considerations are involved in the kind and relative amounts of securities to be issued:

1. Value of tangible assets
2. Amount and regularity of future earnings
3. Market for the securities
4. Considerations of control and management

The following general principles should be observed:

1. Bonds should be issued only to the extent warranted by assured future profits of lean years.
2. Preferred stocks should be issued only to an amount which, over a period of years, will leave a considerable margin of profits over preferred dividend requirements.
3. Common stock only should be issued if future profits are uncertain.

With these principles in mind, proceed in conformity with the nature and peculiarities of the enterprise.

In case of manufacturing enterprises there is a traditional disinclination to create funded debts; hence dependence is placed mainly on stocks.

In case of specialties and other speculative industries, only common stock should be issued.

Preferred stock is justifiable only if a reasonably sound estimate of earnings is possible; but it may be regarded as a fair working rule not to allow the preferred stock dividend to exceed one-third of the prospective earnings. In any case it should be less than the net profits of lean years.

In case of public utilities prospective earnings are also the chief consideration, but they may usually be predicted with greater accuracy; moreover, there is likely to be a closer relationship between investment and earning power.

The most conservative method of financing additions is by means of retained earnings, because no new obligation is incurred to offset resulting increased earning power.

Banks loan to a corporation only if satisfied that certain conditions, which they attach to such loans, will be met. Since the purpose of banking makes it essential that the funds of banks be kept liquid, bankers ordinarily do not lend money which will not be repaid in a relatively short time. Hence money secured through bank loans cannot be used to finance capital assets.

As a rule, bonded debt should be kept down so that average net earnings over a period of years amount to at least twice the greatest annual interest cost. Variations from this rule may be made in accordance with the character of the enterprise and the degree of prosperity which it enjoys.

3. Division of Funds Between Current and Capital Assets

The purchase of current assets should be financed partly through current borrowings. The purchase of capital assets should be financed through issuance of stocks or bonds, or through retained earnings.

To create a suitable working capital ratio, however, part of current assets must be financed through stock and bond issues, or through accumulated earnings.

Responsibility for investments in capital assets should be borne by both the chief financial officer and by those who use the assets. These latter persons are best fitted to exercise judgment in expending such funds.

Under this plan of handing down responsibility persons supervising the various activities are given opportunity to test their skill in managing capital assets, and so are required to view their somewhat circumscribed activities from the point of view of ultimate profits. They cannot remain careless as to their own activities, hoping that the resulting losses will be overcome by the generally favorable results of the business.

Responsibility becomes a departmental affair. Each department is required to act as a self-sufficing unit, thus showing either a favorable or an unfavorable result on net earnings.

4. Treatment of Funds Invested in Capital Assets

Conditions affecting the investment of funds in capital assets change continually. New inventions render old equipment obsolete, resulting in an additional item of cost of uncertain amount, namely, cost of scrapping capital assets

not worn out. Industries may be revolutionized by new inventions to such a degree as to make impossible the profitable operation of old plant.

Internal conditions remaining the same, external conditions may grow more or less favorable with the result that a business which in itself is in a stationary condition becomes relatively weaker or stronger than its competitors.

External conditions remaining the same, internal conditions may grow more or less favorable, with the result that its position as regards competitors is favorably or unfavorably affected.

In practice both sets of conditions change constantly, so that all concerns are either improving or declining.

Change is essential to progress, but involves costs, among which those pertinent to the investment in capital assets are perhaps heaviest. Since the tendency of invention is to lessen the cost of doing a given amount of work, every established concern must be prepared to meet competition of newcomers using more up-to-date plant and equipment and having a smaller total investment in capital assets.

This disadvantage is offset somewhat by the advantage which old businesses possess as going concerns with established customer lists, goodwill, etc. But unless old concerns take the required steps to protect themselves against the bad effects of accumulating investments in capital assets they place themselves at a disadvantage as regards competitors.

Increased costs resulting from excessive investments in antiquated plant and equipment are cumulative in effect, because the resulting disadvantageous position of the enterprise makes it impossible to secure new funds except at increased interest costs.

5. Financial Structure of Business

By the financial structure of a business is meant the relationships existing among the various forms of its invested capital. Of the total invested capital, a certain percentage is in form of receivables, a certain percentage in the form of

inventories, a certain percentage in capital assets (plant and equipment), and so on. Moreover, the relative amounts thus invested change as time passes, so that the financial structure changes also.

During the World War the relative amounts invested in inventories increased greatly; this change was followed by a relative increase in the investment in plant when building programs were carried out to meet the increased demand for manufacturing facilities.

Naturally, the amount invested in current assets is more readily altered than is the amount invested in capital assets.

The financial world experiences periods of expansion and so-called prosperity, followed by periods of deflation and greater or less degrees of unemployment. During periods of expansion prices rise, sales increase, and the capital invested in inventories and accounts receivable tends to increase. When deflation sets in the capital invested in inventories and receivables should decrease, so that the ratio of capital thus invested to sales may remain more or less constant. If such contraction does not occur in proportion to the drop in sales, it is said that the turnover of accounts receivable and inventories is decreased. This situation existed in many businesses in 1920 and 1921, but few being able to maintain normal ratios of investments in inventories and receivables to sale, i. e., normal turnovers of these assets.

In case of investments in plant and equipment expansion is a yet more serious matter. In periods of growth when additional space is required for increased activities it is not usually difficult to secure funds with which to construct extensions to plant and to buy additional equipment; but when capital has been thus congealed it is practically impossible to reduce the amount thus invested when deflation sets in. Thus the increased expense burden inherent in an investment in capital assets is permanent. Consequently the ratio of the investment in capital assets to volume of business done becomes less favorable. This is expressed technically as a decreased turnover on capital assets. The following

table shows the trend in investments in current assets and fixed property, during war and post-war years, in 188 representative companies in various industries.

ANALYSIS OF CHARACTER OF ASSETS OF 188 REPRESENTATIVE COMPANIES IN VARIOUS INDUSTRIES *

(All sums stated in millions of dollars)

Year	Total Current Assets		Total Fixed Property Investment		All Other Assets		Total Capital Employed	
	Amount	%	Amount	%	Amount	%	Amount	%
1914	$2,410	28.7	$4,851	57.8	$1,133	13.5	$8,394	100.0
1915	2,800	31.7	4,916	55.6	1,118	12.7	8,834	100.0
1916	3,626	36.2	5,184	51.8	1,215	12.0	10,025	100.0
1917	4,931	41.2	5,633	47.1	1,403	11.7	11,967	100.0
1918	5,795	43.5	5,955	44.7	1,565	11.8	13,315	100.0
1919	6,054	43.7	6,239	45.0	1,571	11.3	13,864	100.0
1920	6,558	43.7	6,765	41.1	1,682	11.2	15,005	100.0
1921†	5,296	37.5	7,008	49.5	1,808	12.8	14,112	100.0
Increase of 1921 over 1914	$2,886		$2,157		$ 675		$5,718	
Per cent of increase	120.0%		44.4%		59.5%		68.3%	

*From J. H. Bliss: *Financial and Operating Ratios in Management*, p. 165.
†Decrease in current assets in 1921 from 1920 amounts to $1,262,000,000, or 19.2%.

The above considerations show the importance of normal relationships among the divisions of invested capital in a business. If these relationships become abnormal because of bad judgment exercised in making the investments or because of altered business conditions, loss results both to the business and to society, because capital is being employed inefficiently.

What constitutes normal relationships in a given business depends on the nature of the business. Some industries require heavy investments in capital assets, others in current assets. The following table shows the relative amounts invested in current, fixed and other assets in various industries as shown by their published reports for 1921.*

The percentage of total investment tied up in fixed assets varies from as low as 13% for one type of business to as high as 75% or 80% in other types. These wide variations are not accidental but are the direct result of the nature of the

CHARACTER OF INVESTMENTS IN VARIOUS INDUSTRIES *

(All sums stated in millions of dollars)

	No. of Cos.	Total Current Assets		Total Fixed Property Investment		All Other Assets		Total Capital Employed	
		Amount	%	Amount	%	Amount	%	Amount	%
Boot & Shoe Mfg.....	5	$70.8	67.7	$13.6	13.1	$20.1	20.2	$104.5	100.0
Department Stores...	2	28.4	46.2	8.5	13.8	24.7	40.0	61.6	100.0
Genl. Merchandising.	7	97.4	65.5	20.1	13.5	31.2	21.0	148.7	100.0
Elect. Mach. Mfg.....	4	418.7	60.0	143.8	20.6	134.4	19.4	696.9	100.0
Cotton Goods Mfg....	8	111.8	56.0	59.0	29.5	29.1	14.5	199.9	100.0
Slaught. & Meat-Pkg.	5	619.9	56.5	329.4	30.0	148.4	13.5	1,097.7	100.0
Agric. Impl. Mfg.....	5	260.6	62.7	127.3	30.6	27.6	6.7	415.5	100.0
Auto & Truck Mfg....	11	357.0	41.0	353.1	40.6	159.8	18.4	869.9	100.0
Fertilizer Mfg.....	3	134.8	47.6	121.4	42.8	27.2	9.6	283.4	100.0
Rubber & Tire Mfg...	4	205.8	39.3	231.6	44.3	86.2	16.4	523.6	100.0
Leather Mfg.....	2	72.9	50.0	65.2	44.7	7.8	5.3	145.9	100.0
Railway Equip. Mfg..	10	227.6	44.2	243.1	47.2	44.1	8.6	514.8	100.0
Petroleum Oil Cos....	10	685.9	35.5	935.3	48.4	309.9	16.1	1,931.1	100.0
Sugar Production....	7	140.2	31.6	230.6	52.0	73.1	16.4	443.9	100.0
Copper Mining & Mfg.	13	209.4	24.2	572.3	66.4	81.8	9.4	863.5	100.0
Chemical Products...	4	34.0	25.7	92.1	70.0	5.5	4.3	131.6	100.0
Iron & Steel Mfg.....	11	829.3	24.3	2,466.6	72.4	112.9	3.3	3,408.8	100.0
Bituminous Coal.....	5	49.5	13.7	283.3	78.4	28.6	7.9	361.4	100.0
Totals.....	228	$5,946.4	37.8	$7,572.5	48.1	$2,220.3	14.1	$15,739.2	100.0

* From J. H. Bliss: *Financial and Operating Ratios in Management*, p. 165.

businesses. They may be regarded as the characteristics of invested capital in various lines of industry. It should not be assumed, however, that the percentages shown in the table represent normal relationships. To the extent that they do not the investment is out of adjustment and there is a resulting loss. Not only should normal relationships be established under given conditions but studies should be made constantly to see that with growth and changing conditions the various relationships may be kept as nearly normal as possible. Thus under certain conditions an increase in the percentage of capital invested in inventories or in accounts receivable may be normal and result in increased profits.

In general, the test as to whether the investment in given forms of assets is normal is whether or not it is such as tends to result in the greatest net profit over a period of years.

XII

WORKING CAPITAL FINANCING

1. The Problem of Current Financing

Every concern must manage to have sufficient working capital to enable it to buy the materials it requires in its business, meet current expenses of operation, and extend credit to its customers in accordance with the customs of the business. The excess of current assets over current liabilities must, of course, be represented by funded debt or by the equity of the capital stock account, so that in a sense it might be said that working capital must be supplied either through sale of bonds or stock or through accumulation of surplus. In our use of the expression "working capital financing" we shall refer rather to the manner in which the total amount of current assets are kept in the condition that renders it always possible for a concern to meet its obligations without embarrassment. This is primarily a problem of cash rather than of working capital, but we shall employ the usual nomenclature because the problem of cash is closely bound up with that of current assets and working capital.

To illustrate the problem involved, take the case of a company engaged in the manufacture of blankets which it sells to wholesalers. The sales are seasonal, the peak being reached in July and August, thus enabling distribution to be made for autumn and winter consumption. The billings to wholesalers are made on terms of 2% 10 days, 60 days extra, but by custom the 2% discount is allowed when the bill is paid, so that to offset this discount the list price is marked up 2%. Interest is charged if the bill is not paid in 70 days.

The company buys cotton and wool as its raw materials, cotton being paid for on presentation of sight draft with bill of lading attached, the wool on terms of 2% 10 days, net 30 days, or 2% 10 days, net 60 days. The discount is always taken, so that in effect the terms of purchase are cash. The amount bought each month is about the same as for any other month and inventory fluctuations are not large.

In this line of business financing current requirements is usually accomplished by factoring, explained elsewhere in this volume. But in case of an unusual decline in sales the factor might refuse to advance as much money as would be required to carry the inventories of raw materials, in which event it might be necessary to borrow at a bank. Bank loans are usually made for a limited period only, hence the borrower must be prepared to liquidate them when they fall due. An alternative plan would be to sell paper through brokers, or possibly combine the two methods. Various considerations arise, such as the rate of interest charged by banks and the amount which may be thus secured. When money is borrowed at a bank the bank requires that a deposit of possibly 20% of the line of credit be maintained. If paper is sold through a broker a rate of interest commensurate with the risk involved plus a commission to the broker must be paid.

Not infrequently the capital structure of a business is impaired through failure to adhere to certain fundamental principles of finance. Thus if the working capital position is impaired through use of working capital to construct plant, instead of securing the necessary funds by issuing stock or bonds, the management may find that it is unable to meet the requirements of current operations.

The various methods of financing current requirements are discussed in the following pages.

2. The Working Capital Position

Every enterprise must protect its working capital position if it desires to avoid embarrassing shortages in cash. By

working capital is ordinarily understood the excess of current assets over current liabilities, although just what comprises current assets and current liabilities, is not always clear. However, for practical purposes it may be sufficient to regard as current all assets which will be converted into cash within a relatively short time in the usual course of events, as well as cash itself. By current liabilities is understood those which will be liquidated in a relatively short time out of funds derived from the operations of the business. In the consolidated balance sheet of the Hartman Corporation as at December 31, 1926, current assets are shown at $17,731,778 and current liabilities at $5,035,872, thus making the working capital $12,695,906. The balance sheet of the American Smelting and Refining Company as at December 31, 1927, gave current assets as $89,926,505 against current liabilities of $18,378,457, leaving a working capital of $71,548,048. The details were as follows:

CURRENT ASSETS:		
Metal stocks	$36,798,730	
Materials and supplies	7,088,055	
Cash	5,381,316	
Liberty bonds, etc.	25,001,502	
Call loans	5,000,000	
Notes and accts. rec.	10,656,902	
		$89,926,505
CURRENT LIABILITIES:		
Accounts and notes payable	$11,578,935	
Accrued taxes	3,966,848	
Unclaimed dividends	64,242	
Unclaimed interest	55,955	
Dividends payable	2,094,460	
Accrued interest	618,071	
		18,378,457
Working capital		$71,548,048

This is an exceptionally strong position, the ratio of current assets to current liabilities being in the ratio of approximately 5 to 1.

As at December 31, 1927, the current assets and liabilities

of Lehn and Fink, an old established drug products company, were as follows:

CURRENT ASSETS:		
Cash	$297,665	
Accounts receivable	484,521	
Sundry debtors	44,383	
Inventories	668,852	
		$1,495,421
CURRENT LIABILITIES:		
Accounts payable and accruals		308,049
Working capital		$1,187,372

The ratio of current assets to current liabilities, or working capital ratio, is approximately 4.8, also indicating a strong position.

In contrast with these illustrations may be noted the status of Childs and Company, operating a chain of restaurants and cafeterias. As at December 31, 1927, its current liabilities were considerably in excess of its current assets, a situation resulting from the rapid expansion of the company, its large investment in real estate, and expenditures for new plant. The working capital ratio was approximately .7, current assets being $2,601,254 and current liabilities $3,807,707.

The working capital position of a company may be apparently favorable, when further investigation discloses that the status of the various groups comprising current assets is not what it should be. Thus as at December 31, 1927, the current assets of the Walworth Company totaled $12,535,809, against current liabilities of only $1,876,441, leaving a net working capital of $10,659,368. Cash amounted to only $805,058 however, the remainder of current assets consisting of inventories valued at $8,212,134 and accounts, notes and drafts receivable carried at $3,518,617. For this company this may not be a dangerous situation, but it indicates that a satisfactory working capital

ratio is not always proof that a company will be able to meet all obligations as they fall due. The situation of the Walworth Company may be contrasted with that of the International Shoe Company which as at December 31, 1927, possessed cash items equal to more than 2½ times current payables at $6,243,000.

3. Proper Amount of Working Capital

There is no final answer to the question, how much working capital should a concern have? Some businesses require relatively little working capital because their receipts are evenly spread throughout the year and they are not required to tie up large sums in inventories or accounts receivable at certain seasons of the year. Most utility companies fall in this group. For such companies enough working capital to meet one and a half months' operating expenses is adequate. The amount of working capital must expand with the expansion in volume of business, and the greater the length of time consumed in manufacture the larger the amount of cash required, whereas the more rapid the turnover of commodities and accounts receivable the less will be the amount of working capital required.

4. Circulating Capital

For certain purposes it may be desirable to have a term to designate that part of current assets which is constantly being changed from one form into another, the circle being cash to merchandise to accounts receivable, then back to cash. This is usually equivalent to gross current assets. This quantity, which ordinarily consists of the sum of cash, accounts receivable, and merchandise at a given time may be valuable in making certain computations of turnover. Thus we may compute the turnover of merchandise, of accounts receivable, or of the entire amount of working capital.

Turnover of circulating capital is best found by dividing

the amount of circulating capital into gross sales, whereas that of merchandise should be determined by dividing the average inventory into cost of goods sold.

The close relationship between turnover and the required amount of working capital is evident. Speeding up turnover of circulating capital usually means that less working capital is required to do a given amount of business.

The conservation of circulating capital is of primary concern to every business. In the first place it must not be employed to purchase capital assets. Other ways of conserving it are by taking all cash discounts, keeping down costs of production by scientific studies of methods of handling inventories of raw materials, efficient control of all labor costs by offering inducements to greater effort, and standardization of all methods as well as of output. The credit department can do much to conserve working capital by investigating all prospective customers with a view to eliminating undesirable accounts; also by employing up-to-date collection methods. Thoroughgoing analysis of all accounts receivable with a view to adequate treatment of bad and doubtful ones is essential.

Much can be done by a company's salesmen to determine the buying and paying capacity of customers. *System*, October, 1927, pages 538-539, enumerates the heads under which information relative to customers should be secured as follows:

Accounting: These questions go into the kind of records that are kept, how the customer fixes prices and profits, the condition of stock, the rate of turnover, etc.

Borrowing money: Which deals with the banking relations.

Cash discount: The discounting habits of the customer.

Cash sales: The safeguards thrown around cash sales.

Buying: The tendency of the customer to buy according to his real needs.

Collections: How the customer goes about collecting money.

Extending credit to his customers: Whether he uses any method of checking up on the ability of his customers to pay.

Dealer's credit rating: The interest of the customer in having a good mercantile rating.

Delivery system: How he makes deliveries.
Fixtures: Whether the fixtures are attractive or not.
Insurance: The amount and kinds of insurance carried.
Legal: What attention he gives to having his affairs conducted in a legal manner.
Partners or officers: Whether there are differences between the partners, and, if so, what the differences are.

5. Sources of Cash and Working Capital

The sources of cash should not be confused with the sources of working capital. The purpose of an adequate working capital is to put a business in such condition that it may at any time possess or get possession of sufficient cash to meet current liabilities falling due. Since the company must be always thus favorably situated it must always possess an adequate working capital, i.e., excess of current assets over current liabilities. It is evident that the excess of current assets over current liabilities on the balance sheet must be derived either from sale of securities or from surplus. This is proper since working capital should be just as fixed as capital assets are.

Cash, on the other hand, may quite properly be a highly variable quantity, so long as the condition of the current assets is such that liquidation of portions thereof may be effected to an extent sufficient to afford the required amount of cash.

It is evident that not all cash is to be used for payment of current liabilities. Thus that secured from sale of stock and bonds is ordinarily used for purchase of capital assets or some other form of capital financing. There is also permissible a certain amount of interchange of means of financing. Thus money is sometimes borrowed from banks and used to purchase or construct capital assets, bonds being sold later to secure funds to repay the banks.[1] Naturally, these percentages will vary according to circumstances.

[1] See Fraser, C. E., *Problems in Finance*, p. 226.

6. Commercial Paper

Sometimes borrowing in the open market is resorted to to supplement bank loans, sometimes to avoid the necessity of bank loans, sometimes for the advertising value of open market flotations, and sometimes because it is regarded as a cheaper means of securing the necessary funds. Again, the open market flotation may be instrumental in improving a concern's credit at its banks. Banks expect that all loans from a given concern will be liquidated not less than once or twice each year, and resort to the open market is likely to remove the strain on bank loans, rendering their liquidation easier and hence putting the banker in a more receptive mood for future financing.

In order to float a loan on the open market a company will be required to present to the broker a balance sheet indicating its financial standing. Probably the company will also be required to present a list of its receivables indicative of the liquid status of the current assets. The requirements for open market borrowing are usually more stringent than for borrowing at banks, and this fact may be instrumental in bettering the credit standing of a company which floats a loan on the open market. Commercial paper usually secures a wide distribution among banks and investors, thus aiding in the establishment of a favorable reputation if the company continues to make prompt payments on each succeeding loan floated.

If a company borrows at a bank it will be expected to keep on deposit perhaps 20% of the amount borrowed, which increases the cost of the loan. If it borrows on the open market it will pay the broker's commission of perhaps ¼ of 1%.

Sometimes a satisfactory arrangement is to borrow on the open market at the same time retaining suitable banking connections for emergency loans. The chief object of such banking connections is to enable the concern to liquidate its commercial paper in the event that a business depression

renders difficult the flotation of additional loans by this means.

If it is decided to sell commercial paper the bids of several note brokers should be secured, to determine which one will offer the most satisfactory terms.

7. Investigation by Note Broker

Before a company engaged in the business of note brokerage will purchase a concern's commercial paper it will make an investigation of its financial standing. Among the things to be considered are:

1. Character of business
2. Personnel of management
3. Financial standing

The report of those assigned to investigate the affairs of a company with a view to ascertaining the desirability of its commercial paper from the point of view of a note broker is illustrated below:

The Dunn and Good Products Company

The predecessor of the Dunn and Good Products Company was Dunn and Good, Inc., organized in 1874 to supply drugs and chemicals to druggists and the medical profession. For the last twenty years it has distributed Dubeco and Novo products. In August, 1925, the present company was organized to acquire stocks of subsidiary companies manufacturing Dubeco, Novo and Hudson products, and in the latter part of 1926 the Dorothy Sweet cosmetics factory was acquired.

The New York plant, which is located on a 60-acre site, has a floor space of 15 acres. The company owns 10 acres of building lots which it sells to employees for residential purposes.

Executive offices are located in New York City. Branch sales offices are maintained in 25 cities in the United States, through which the bulk of the output is distributed direct to about 30,000 retailers. The company enjoys a considerable volume of foreign trade.

Capital stock consists of 285,000 common shares and 150,000 management shares, all issued in connection with the acquisition

of subsidiaries, except 10,000 common shares, sold in 1927 at $35 a share. Since issuance, the common has received annual dividends of $3 a share and the management stock has received 30 cents a share.

Management shares are convertible into common on a share for share basis in case net earnings on the common have been at the rate of not less than $6 a share and dividends at the rate of $3 a share have been paid in the two preceding years, or they may be called at $60 a share upon the request of holders of two-thirds of the common stock. There is still outstanding $875,000 of an issue of 2-year 6% notes issued in the amount of $1,250,000 on January 1, 1927. The reduction in funded debt of the company was accomplished by the sale of the 10,000 shares mentioned above.

Comparative balance sheets as at December 31, 1925, 1926, and 1927 are shown below:

ASSETS

	1927	1926	1925
Plant (less depreciation and mortgages)	$1,276,135	$1,144,937	$1,178,484
Trade marks, etc.	7,653,171	6,214,421	6,214,421
Investments	277,439	305,936	214,362
Capital stock Products Distribution Co.	1	1	1
Deferred charges	102,829	80,865	49,292
Current Liabilities—			
Cash	297,665	231,436	512,127
United States bonds	.....	.....	193,599
Accounts receivable	484,521	345,007	274,487
Sundry debtors	44,383	42,883	29,144
Inventories	668,852	498,938	584,866
Total current assets	$1,495,421	$1,118,264	$1,594,223
Total assets	$10,804,996	$8,864,424	$9,250,753

LIABILITIES

Capital stock and surplus	$9,271,506	$8,383,968	$7,796,775
Minority interest, Novo, Inc.	29,688	27,690	26,047
Reserves	319,753	203,273	1,257,214
Gold notes	875,000	.....	.....
Current Liabilities—			
Accounts payable and accruals	308,049	249,493	170,717
Total current liabilities	$ 308,049	$ 249,493	$ 170,717
Total liabilities	$10,804,996	$8,864,424	$9,250,753
Net working capital	$ 1,187,372	$ 868,771	$1,423,506

During the last two years plant account has shown little change, while the intangible item, already disproportionate as compared with the item of fixed assets, has been increased almost $1,500,000 in the last year.

The working capital position is strong, the ratio of current assets to current liabilities being about five to one. As at December 31, 1927, net current assets, or working capital, amounted to $1,187,372, or over $300,000 in excess of that of a year previous, but about $250,000 below that of two years previous. The cash item of over $297,000 is nearly equal to the total current liabilities. The inventory account is about one-third higher than at December 31, 1926.

Other exhibits than that shown in the above illustration may be required, such as,

1. Comparative income account
2. Interest and funded debt requirements
3. Statement of borrowing record at banks
4. Reconciliation of surplus account of parent and subsidiary companies
5. Statement of amounts of raw materials purchased, terms, and payments therefor.

Frequently the note broker will write to eight or ten concerns doing business with the company whose notes they are considering selling, also the banks at which it keeps deposits, as well as two or three independent banks located in the same city.

FORM 163

COMMERCIAL PAPER

NO._____ _____ 192__ $_____

_____ AFTER DATE WE PROMISE TO

PAY TO THE ORDER OF _____ OURSELVES _____

_____ DOLLARS

AT _____

VALUE RECEIVED. _____

DUE_____ _____

The form of commercial paper used may be the special form of the issuing company or it may be a form provided by the note broker. Form 163 shows a form of commercial paper provided by a Chicago note broker. Being payable to "ourselves" it is endorsed on the back by the issuing company to make it negotiable. Such notes are made out in denominations ranging from $2,500 to $100,000 and with maturities ranging usually from three to nine months. These commercial notes bear no interest, so when the broker buys them he discounts them and remits to the issuing company for the face amount of the notes less the discount and his commission of ¼%. The statement sent to the issuing company is illustrated in Form 163*a*. The broker's profit consists of his commission. He may make a profit also on the sale of the paper, but there is equal likelihood of his incurring a loss thereon. The price at which he can dispose of the paper to trust companies and savings and commercial

FORM 163*a*

COMMERCIAL PAPER, ETC.

Jones & Company

CHICAGO, March 7, 1929

Waukegan, Ill.

HATHAWAY & CO.

COMMERCIAL PAPER.
INVESTMENT SECURITIES
208 SOUTH LA SALLE STREET

EX.

PROMISOR	PAYABLE	DUE	AMOUNT	DAYS	RATE	DISCOUNT
Selves	Chgo	Sept 7	5000	180	4	100
			112 50			12 50
			$4887 50			112 50

banks depends on the condition of the money market. Interest rates vary slightly from day to day.

In order to sell to banks the latter must be given an opportunity to investigate. In Chicago note brokers sell to banks giving them a ten-day option. At any time during this ten-day period the banks have the privilege of returning the paper to the broker. A broker located in Chicago will sell his paper throughout the country, large Chicago banks sometimes acting as buying agents for banks located in smaller towns. When a Chicago broker sells to distant banks the option period may be extended to 15 or 20 days.

The broker gives the interested banker a sheet marked "Confidential," containing information similar to that presented on page 355. This is sometimes accompanied by a statement made out on the blank shown in Form 164, giving information as to the borrowing company's sales, profits, and dividends over a period of years, etc. Under "Endorsement" is entered the name of any endorser who may wish to lend his credit to the borrowing company by endorsing on the reverse side of the notes under the endorsement of the company. Under "Trade References" are listed names of companies with which the borrower does business and to which the bank which buys the paper may write for information regarding the credit standing of the issuing company.

Rates on commercial paper are furnished daily by note brokers to the financial papers, this information being somewhat as follows:

MONEY MARKETS

CHICAGO RATES

Money rates are quoted to Chicago banks as follows: Commercial paper, 4 to 4½ per cent; brokers' collateral loans, 4½ per cent; customers' over-the-counter loans, 4¾ to 5½ per cent.

This means that on the day this notice was published commercial paper could be bought to yield from 4% to 4½%. Commercial paper is usually unsecured.

Note brokers usually limit their purchases of notes to concerns having a capitalization of not less than a given amount. Thus a note broker who deals in large issues is not likely to consider buying the notes of a company whose net worth is less than $300,000 or $500,000. In beginning to establish relationships with a prospective borrower the

FORM 164

INFORMATION CONCERNING BORROWER

Established
Incorporated

INFORMATION RE STATEMENT

Year Ending	*Sales*	*Profits*	*Dividends*
.....	$.....	$.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Contingent Liability:
Bills and Accounts Receivable:
Inventory:
Insurance:
Federal Taxes:

Endorsement:
Trade References:

STATEMENT OF SURPLUS

Surplus,
Add: Profits

Surplus,

$.....

broker will refer to the information furnished by one of the large credit agencies such as Dun's. After some preliminary correspondence he will ask for a financial statement, and later correspond with several banks and trade associates capable of furnishing the desired information.

Note brokers follow the rule that a company's total outstanding commercial paper plus its bank loans should at no time exceed its total line of credit at its banks. Thus if its line of bank credit amounts to $500,000 and it has bank loans outstanding amounting to $200,000 it should not sell commercial paper in excess of $300,000.

Bank credit and commercial paper perform the same function, so far as corporate financing is concerned. They supplement each other, money market conditions usually determining which should be employed to provide funds for current financing under given conditions. By selling commercial paper a company may improve its bank credit, being thus enabled to liquidate the latter at proper intervals.

Commercial paper of a widely and favorably known company usually sells on a basis to yield from ¼% to 1½% less than that of companies not so well known but whose credit standing may be equally good.

That financing through the issue and reissue of short-term notes is in some cases unwise policy was shown by the experience of the National Cash Register Company. Working capital was employed to construct plant, hence the necessity followed of borrowing more money, which was done by placing short-term paper at high interest rates, and the necessity of making renewals became exceedingly embarrassing. The difficulty was solved by issuing preferred stock and paying off the notes with the proceeds. The company did not discontinue the policy of borrowing on notes, but the betterment of its working capital position as a result of the sale of stock enabled it to buy back its notes before their due date, which it sometimes did, thus creating a good moral effect and placing it in such a favorable status as regards credit that it no longer suffered from shortages of money.

8. Bank's Investigation of Commercial Paper

Since a bank is given a ten-day option on the paper it buys it has time to make some investigation of the credit standing of the issuing company. Forms 165, 166, 167, 168, and 169 are employed by the credit department of a large bank to make such investigation.

FORM 165

Dear Sirs:

We are investigating the company mentioned above in connection with its commercial paper offerings and shall value your opinion as to the safety and desirability of its paper as a bank investment.

We are communicating with the depository banks, but an expression from a disinterested source regarding the company's management and general standing in the community would be very helpful.

It will be our pleasure to return the courtesy whenever we can be of service.

Yours very truly,

Manager, Credit Department

Used in checking *commercial paper names.*
Sent to *banks not having an account* from the company.
Printed form.

FORM 166

Dear Sirs:

We are revising our files on....., in connection with the offerings of its commercial paper on the open market. It is our understanding that you enjoy a portion of the company's business and, if consistent with your policy, we would appreciate having your opinion of its credit standing, financial responsibility, and management. We are particularly anxious to know the extent of credit accommodation you allow the company, the basis of its borrowings, the amount under discount at the present time, and the manner in which the account has been conducted.

Your assistance regarding the foregoing will be of great service to us and any information received will be used with the utmost discretion. We trust you will have no hesitancy in calling upon us whenever we can reciprocate your courtesy.

Yours very truly,

Used in checking *commercial paper names.*
Sent to banks having *account* from company.
Each letter specially typed.
No carbon copy.

FORM 167

Dear Sirs:

We are investigating the company mentioned above in connection with its commercial paper offerings and shall value your opinion as to the safety and desirability of its paper as a bank investment.

We are communicating with the depository banks, but an expression from a disinterested source regarding the company's management and general standing in the community would be very helpful.

It will be our pleasure to return the courtesy whenever we can be of service.

Yours very truly,

Used in checking *commercial paper names.*
Sent to *banks not having an account* from the company.
Printed form.

Assistant Cashier

FORM 168

Dear Sirs:

We are revising our file on the name mentioned above in connection with its commercial paper offerings on the open market and would appreciate as comprehensive an opinion as you may feel justified in giving us respecting your knowledge of and experience with the risk.

We are particularly interested in knowing the highest credit

extended, whether sold on regular or special terms, and if payments are discounted, anticipated, prompt or slow.

Any information you may give us will be treated discreetly and it will be a pleasure to reciprocate the courtesy whenever we can be of service to you.

Yours very truly,

Manager, Credit Department

Used in checking *commercial paper names.*
Sent to *trade houses.*
Printed form.

FORM 169

Dear Sirs:

We are making an investigation of..... in connection with its commercial paper offerings.

It is our understanding that its product is sold through your organization and in view of your extensive business relations with it, we would value an opinion from you regarding your experience with the account and, if agreeable, a résumé of your financial arrangements with the company as to advances, etc.

Any information you can consistently give us concerning the company's standing in the industry, the character of its management, its product, and the efficiency and condition of its manufacturing facilities will be greatly appreciated.

Assuring you of our readiness to reciprocate your courtesy, we are

Yours very truly,

Used in checking *commercial paper names.*
Sent to *selling agents of mills.*
Each letter specially typed.
No carbon copy.

---

9. Bank Loans

Some concerns do business with one bank exclusively; others prefer to establish lines of credit at two or more banks, thinking that it is to their advantage to have more than one bank familiar with their affairs. Also, where a

company establishes relationships with several banks it creates a competition among them and is in a position to secure a loan upon the most satisfactory terms.

Banks usually require that an average deposit be maintained equivalent to a certain percentage of the amount loaned. Frequently this is fixed at 20%, but may be allowed to vary somewhat from this in either direction. Before a bank grants a loan it will satisfy itself that the financial condition of the concern and the integrity of the management justify it. It desires to be reasonably well assured that the company's notes will be liquidated when they fall due so that they will not be marked "slow" by the bank examiner. Banks desire that borrowers liquidate their notes to it at least once a year, and possibly oftener.

The bank is primarily interested in the working capital position of the borrowing company since it is to current assets that it must look for repayment of loans. If a concern is so unfavorably situated as to be unable to take its cash discounts it might not be able to liquidate loans made at the bank. Its working capital ratio may be so unfavorable as to discourage bankers from extending loans. The accounts receivable may be excessively large and a classification thereof may disclose that many are long overdue or uncollectible. In such cases what a company may require is not temporary loans but an increase in funds secured by sale of stock or bonds.

Likewise, the net profit showing over a period of years must be satisfactory. Bankers are not likely to extend credit to a company whose surplus is decreasing as the result of operating net losses.

Bankers frequently classify their customers according to certain more or less arbitrary rules. Thus in the group to which they are willing to extend the highest credit rating they may include those concerns which make an annual net profit of about 3% on net sales and who maintain a working capital ratio of at least 2 to 1. To such concerns a bank might be willing to grant loans amounting to possibly twice

the amount invested in the business by the proprietor. In the second group the banker might include concerns whose management has had less experience and who have not shown the capacity to earn satisfactory profits in bad years. To such concerns he might conclude to loan sums not in excess of the amount of money invested by the proprietors. In the third class would be grouped the unsuccessful enterprises of the banker's acquaintance. To these he strictly limits his loans, seeing to it that the total allowed by his own and other banks does not exceed possibly one-half the capital invested by the proprietors. All such classifications and rules are somewhat arbitrary, nevertheless they afford a start in the process of elimination of the unfit.

If a concern possesses notes or trade acceptances of its customers it may discount these at a bank by endorsing them, thus making itself contingently liable thereon.

It is a matter of fundamental importance for every corporation to make and retain satisfactory banking connections. It can do this by first carefully selecting the bank or banks best suited to its purposes and then keeping them fully informed as to its progress and current financial standing. A business which enjoys satisfactory banking connections possesses many advantages from the point of view of credit and general standing in the business world.

If a company has many widely distributed branches a proportionately large number of bank accounts may be required unless some centralized system of handling cash can be devised.

It is as important that a business concern investigate a bank's standing and usefulness for its particular purposes as it is that the bank investigate the status of the business concern before loaning it money. In selecting a bank the questions to be asked should be with reference to its location, size as compared to the line of credit that may be required, attitude of the officers and directors toward the enterprise in question, and equipment of the bank for any special services that may be demanded of it. The questions

the bank is likely to ask of the concern seeking connections with it will be concerned with the business ability of the men in charge, the earning power of the business, and its status as regards working capital. To make a satisfactory customer a concern must support a bank balance in keeping with its line of credit requirements. The past record of the enterprise as regards borrowings may be investigated.

Most banks will require the applicant for a loan to fill out an application blank showing the company's latest available balance sheet and income statement, a statement of surplus, and other information necessary or helpful in arriving at a suitable credit rating of the company. The form used for this purpose by the Continental National Bank and Trust Company of Chicago is shown in Form 170.

10. Banks and Small Borrowers

Small borrowers are hesitant about seeking bank loans, regarding them as favors rather than strictly business

1-23 (Corporation)

FORM 170

APPLICATION BLANK FOR LOAN

TO CONTINENTAL NATIONAL BANK AND TRUST COMPANY

Name (Corporate style under charter)----------
Business----------
Location----------Branches----------

For the purpose of procuring credit from time to time from you, the undersigned hereby makes to you the following statement of the condition of the undersigned on the----------day of----------, 19--; and the undersigned hereby agrees and guarantees that said statement is in all respects true and correct; and you may consider said statement as to the pecuniary responsibility of the undersigned, as continuing to be true and correct until written notice of a change is given to you by the undersigned.

Fill all blanks, writing "no" or "none" where necessary to complete information.

Please state here whether inventory has been figured at cost or market

ASSETS	Dollars	Cts.	LIABILITIES	Dollars	Cts.
Cash on Hand and in Banks			Notes Payable for Merchandise		
Accts. Rec. from Customers, not pledged			Notes Payable to Banks		
Notes Rec. from Customers, not pledged			Notes Payable for Paper Sold		
Acceptances of Customers, not pledged			Accounts Payable for Merchandise		
Merchandise, Finished			Trade Acceptances Given		
" Unfinished			Notes and Accounts Payable to Directors, Officers, Employees, etc—not endorsers		
" Raw Material					
U. S. Securities					
Listed Stocks and Books					

(Continued on next page)

FORM 170 *(Continued)*

Advances (on)					Notes and Accounts Payable to Endorsers				
					Notes and Accounts Payable to Affiliations				
					Money Deposited with this Company				
					Reserve for Taxes				
					Bonds or Mtgs. Maturing within 12 months				
					Accrued Interest, Rent, Labor, Salaries, etc.				
SUB-TOTAL					SUB-TOTAL				
Accts. Receivable from Customers, Pledged or Discounted					Liability on Accts. Receivable Pledged or Discounted				
Notes Receivable from Customers, Pledged or Discounted					Liability on Notes Receivable Pledged or Discounted				
Acceptances Pledged or Discounted					Liability on Acceptances Pledged or Discounted				
Merchandise, Pledged					Notes or Accounts secured by Merchandise				
Securities, Pledged					Notes Payable—Secured				
TOTAL CURRENT ASSETS					TOTAL CURRENT DEBT				
Notes and Accounts Receivable from Officers, Directors, Stockholders or Employees (See page 2)					Bonded Debt — Maturity, 19				
					Mortgage Debt — Maturity, 19				
Investments and Accts. Receivable—Affiliations (See page 2)					Other Funded Debt — Maturity, 19				
					TOTAL LIABILITIES				
Other Investments. (See page 3)					Reserve for depreciation of plant and equipment				
Prepaid Charges					Other Reserves				
Real Estate and Buildings. (See page 3)					Capital (Preferred Stock)				
					Capital (Common Stock)				
Machinery, Fixtures, etc.									
Good Will, Patents, Copyrights, etc.					Surplus and Undivided Profits				
TOTAL					TOTAL				

INCOME ACCOUNT		
Net Sales for period	$	
Cost of Mdse. and Sales*	$	
Trading Profit	$	
Other Income		$
Total Income		$
Administrative exp., salaries, etc.	$	
Fixed charges, including taxes	$	
Deduction for bad accounts	$	
Deduction for plant and equipment depreciation	$	
Other deductions	$	
Total Deductions		$
Net Profits		$

*If depreciation is included in cost of merchandise and sales, please state amount so included $

SURPLUS ADJUSTMENT ACCOUNT		
Surplus as of last Statement	$	
Adjustments*	$	
Adjusted Surplus		$
Net Profits		$
Total		$
Dividends paid		$
Surplus as of this Statement		$

*If adjustments involve important transactions, please give details below:

NOTE: Please furnish in detail the information called for on following pages. Please sign statement officially on page three.

FORM 170 *(Continued)*

All the foregoing information and data shall be considered and taken as part of the foregoing statement:
Is statement audited by a Certified Public Accountant? If so, by whom?

CONTINGENT LIABILITY

Have you any Contingent Liabilities for:
- Accommodation paper or endorsements for others $
- Foreign Credits including discounted drafts $
- Guarantee of Dividends or accounts of subsidiaries $
- Litigation on or threatened $
- Guarantee of stocks, bonds or mortgages $

Are all bad and doubtful assets excluded from above statement?

Does your deferred indebtedness constitute a lien on current assets?

GENERAL INFORMATION

On statement date to what extent were you protected by any commitments or contracts regarding the purchase of material or merchandise for the current season?
In whose name does your real estate stand of record?
Are any of your officers insured for benefit of Corporation? If so, give particulars

Fire Insurance on Buildings and Plant $ On Merchandise $ Total $
Other Insurance
Give basis of statement, whether actual inventory, by whom taken and date, or if estimate, by whom made and date

Time and amount of your Maximum Indebtedness during the past year Month $
Time and amount of your Minimum Indebtedness during the past year Month $
Are any of your officers connected in any way with other enterprises and do they endorse for others?
If so, please give particulars

Give the names of all Banks where accounts are kept, lines of credit given by each, and method of borrowing (against collateral, endorsements or other security): Method:

$;
$;
$;
$;
$;
$;

Do you at times borrow on collateral?
Other Banks, Bankers and Brokers handling notes, and other sources of credit: Method:

$;
$;
$;

State whether the proceeds of loans applied for are to be used:
(a) For permanent investments, that is, investments in lands, plants, machinery, improvements, or transactions of a similar nature

or

(b) For agricultural, industrial or commercial purposes, in connection with the production and distribution of commodities

Do your plans for the current year involve any material additions or improvements to your real estate, plant or equipment?
If so, please state the nature, approximate cost and method of financing such changes

DUE FROM CONTROLLED OR ALLIED CONCERNS

Name of Concern	Location	For Advances	Terms	For Merchandise	Terms
		$			

(Continued on next page)

FORM 170 *(Continued)*

RECEIVABLES DUE FROM OFFICERS, STOCKHOLDERS OR EMPLOYEES

Name	Position	Amount	Since When	Due	How Secured	Why Extended
		$				

ENDORSERS OR GUARANTORS ON YOUR PAPER

Name	Responsibility aside from interest in this Company

STOCKS, BONDS AND INVESTMENTS
Give description and cash market value:

LAND AND BUILDINGS

Description and Location	Title in Whose Name?	Appraised Value	Book Value	Mortgages
		$	$	$

OFFICERS

Name	Position	Number of Shares Held		Address
		Pfd.	Com.	
	President			
	Vice President			
	Secretary			
	Treasurer			

DIRECTORS

Name in Full	Number of Shares Held		Address
	Pfd.	Com.	

FORM 170 *(Continued)*

In what state incorporated_____Date of incorporation_____Capital Stock authorized $____

The maximum aggregate amount which the undersigned expects to borrow on short credit or sale of paper during the ensuing fiscal year is $_____, and the undersigned agrees that it will not during said period borrow any greater sum on such paper without first obtaining your consent thereto.

The foregoing statements and details pertaining thereto, both printed and written, have been carefully read by the undersigned, and I hereby solemnly declare and certify that the same is a full and correct exhibit of our financial condition.

Corporation Name_____

By_____
(Officer's title must be given)

Date Signed 19

STATE OF_____ } ss.
COUNTY OF_____ }

_____being duly sworn, on oath deposes and says that he is the _____of_____: that he knows the contents of the foregoing statement by him subscribed as such_____, and that he subscribed the same on behalf of said_____, and that said statement is true in substance and in fact to the best of the deponent's knowledge and belief.

_____

Subscribed and sworn to before me this_____
day of_____19____

_____
Notary Public

NAMES OF PRINCIPAL HOUSES EXTENDING YOU CREDIT

Do you discount or anticipate all your bills?_____

MISCELLANEOUS INFORMATION

matters. This is an unfortunate point of view and the man who takes it may in consequence suffer losses greatly in excess of the cost of such loans. Some small borrowers do not deserve bank credit, but many do not use it who do deserve it. One reason for this is that many small concerns are not in a position to furnish the statements which the bank demands. The wider application of correct accounting methods will help to remedy this. The attitude of some business men toward banks is explained as follows by E. E. Lincoln:[1]

. . . Even among business men of considerable prominence, there is frequently evidence of an utter failure to understand

[1] See *Applied Business Finance*, 3rd ed., p. 372.

the true functions of a commercial bank. Many apparently expect the bank to lend them money almost wholly upon the security of their fixed assets, or to furnish permanent capital. They object to the usual inquiries and investigations made by the banks, resent the customary deposit requirements, are reluctant to pay off their loans periodically, and in general fail to understand the need for close cooperation between the bank and the borrower, if business is to be successfully conducted. Many borrowers in times past have been particularly resentful to any suggestions which the bank might make regarding the conduct of their business.

11. Unsecured Bank Loans

Most loans made by banks to business enterprises are unsecured, i.e., made by the acceptance by the bank of the borrower's note which it discounts, crediting the borrower's account for an amount represented by the face of the note less the discount. Such loans are usually for a specified time, and the bank expects the borrower to liquidate the debt at the maturity date of the note. As a rule such loans mature in from 60 days to four months. Sometimes, for additional safety, the bank may ask for the endorsement of some party willing to go security for the borrower. This creates "two name paper."

12. The Rate of Interest

The rate of interest on bank loans depends primarily on the money market, but business conditions generally and the bank's resources are factors. As a bank's reserves are lowered it raises its discount rate to protect them. There are times when money is plentiful and banks are compelled to look for special avenues of investment. There are other times when funds are so scarce that banks cannot meet the demand for loans. Naturally, interest rates are higher at such times. Seasonal influences may be present, as for example when money is required in autumn to move the crops. Short-term loans usually carry a lower rate of interest than long-term loans, and call money is sometimes obtainable at

exceedingly low rates. The greater the risk involved in the loan the higher the interest rate the banker asks. Geographical location of the borrower is a consideration. Rates in southern and western states are sometimes two per cent higher than in the eastern states.

13. The Rediscount Privilege

Under the Federal Reserve Act member banks are permitted to rediscount paper with any Federal Reserve Bank, securing in return Federal Reserve Notes, providing the paper is eligible for rediscount. The Federal Reserve notes are usually secured by rediscounted commercial paper up to the full value of the notes, plus a 40% gold reserve. The requirements for eligibility for rediscount are prescribed as follows by the Federal Reserve Board:[1]

1. The paper presented for rediscount must at the time have a maturity of not more than 90 days exclusive of days of grace. If drawn or issued for agricultural purposes, or based on live stock, six months' maturity is allowed.

2. The loan must have arisen out of actual commercial transactions; that is, the note, draft or bill of exchange must be issued or drawn for agricultural, industrial or commercial purposes and the proceeds must be used for such purposes. On this particular the regulations of the Federal Reserve Board are very specific, and the Board has defined the character of a note, draft or bill of exchange eligible for rediscount as follows:

(*a*) It must be a note, draft or bill of exchange which has been issued or drawn, or the proceeds of which have been used, or are to be used in the first instance in producing, purchasing, carrying or marketing goods in one or more stages of the processes of production, manufacture or distribution, or for the purpose of carrying or trading in bonds or notes of the United States.

(*b*) It must not be a note, draft or bill of exchange the proceeds of which have been used, or are to be used, for permanent or fixed investments of any kind such as land, buildings or machinery, or for any other capital purpose.

(*c*) It must not be a note, draft or bill of exchange the proceeds of which have been used, or are to be used, for investments

[1] E. E. Lincoln, *Applied Business Finance* (A. W. Shaw Company, Chicago) pp. 417-418.

of a purely speculative character or for the purpose of lending to some other borrower.

(*d*) It may be secured by the pledge of goods or collateral of any nature, including paper which is ineligible for rediscount, provided it (the note, draft or bill of exchange) is otherwise eligible.

3. The aggregate of notes, drafts and bills bearing the endorsement of any one borrower and rediscounted by any one member bank shall at no time exceed more than 10 per cent of the unimpaired capital and surplus of such bank. This restriction, however, does not apply to paper which is secured by government bonds nor does it apply to the discount of bills of exchange (acceptances and the like), drawn in good faith against actually existing values.

4. The paper presented for rediscount must be endorsed by a member bank, and the bank must also certify that a recent financial statement of the borrower is on file with it. Ordinarily a copy of this statement would be presented with the paper brought for rediscount. When, however, a note discounted by a member bank for a depositor is secured by a warehouse, terminal or other receipt covering goods in storage, a statement of condition is unnecessary. Also if the aggregate obligations of the borrower rediscounted are less than $5,000 or less than 10 per cent of the paid in capital of the member bank, a statement of condition is unnecessary.

5. A promissory note for the purposes of the foregoing regulations is defined as an unconditional promise in writing signed by the maker to pay in the United States at a fixed or determinable future time a certain sum in dollars to order or to bearer.

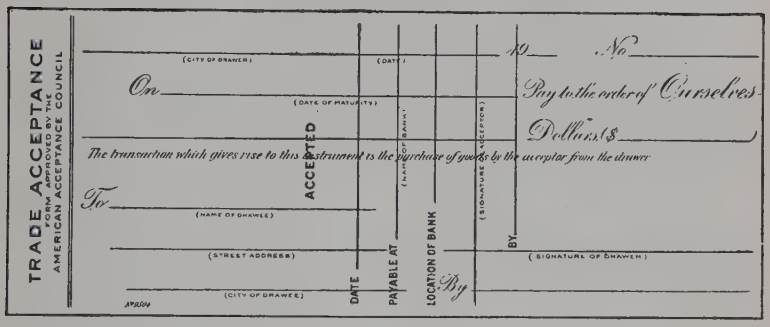
14. Trade Acceptances

Trade acceptances have in recent years been used to a considerable extent to aid in current financing and have received the sanction of the Federal Reserve Board. A trade acceptance is a draft or bill of exchange drawn by the seller on the buyer, being unconditionally accepted by the latter in writing on the face of the instrument. The standard form of trade acceptance is shown in Form 171. A modified form used by a large bank is shown in Form 172.

On the face of the acceptance is a statement to the effect that the obligation of the acceptor arises out of the pur-

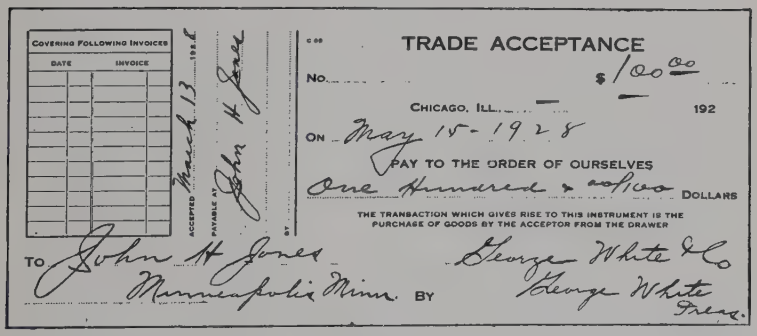
FORM 171

STANDARD FORM OF TRADE ACCEPTANCE



FORM 172

MODIFIED FORM OF TRADE ACCEPTANCE



chase of goods from the drawer. The acceptance is made payable by the acceptor or purchaser at such bank or trust company as he may elect, or at his place of business, but it is usually made payable at the customer's own bank as a matter of convenience. The seller sends the instrument to the buyer who accepts it by writing his acceptance across its face and who then returns it to the seller, who holds it to maturity, discounts it at his bank, or sells it on the open market. If the bank which discounts the trade acceptance is a member of the Federal Reserve System it may redis-

count it with the district Federal Reserve Bank, provided time elapsing to maturity does not exceed 90 days. National banks may discount customers' trade acceptances to any extent they desire.

The chief difference between the use of drafts and trade acceptances is that trade acceptances are issued at the time a sale is made whereas drafts are usually issued to bring slow-pay customers to terms.

The trade acceptance represents an effort to get away from the open account system of accounts receivable with its infinite variety of terms of payment. It is pretty generally admitted that the open account system leads to certain abuses such as slow settlements, overbuying, cancellation of orders, and tying up of funds in open accounts receivable. It is maintained that the trade acceptance is at least a partial remedy for this situation, particularly for the evil of the open accounts receivable. It appears that the value of the trade acceptance as a means of securing cash has been exaggerated, since it is merely another means of using a concern's available credit and not necessarily better, for example, than bank loans or sales of commercial paper. As stated by Lincoln,[1] "the discounting of trade acceptances merely serves to cut down a borrower's bank lines by a proportionate amount."

15. Uniform Trade Acceptances

The following is from the report of the Committee on Acceptances of the Clearing House Section at the convention of the American Bankers Association in 1927:

The question as to the negotiability of trade acceptances bearing the notation: "The obligation of the acceptor hereof arises out of the purchase of goods by the acceptor from the drawer. The drawee may accept this bill, payable at any bank, banker or trust company, in the United States, which such drawee may designate," was raised in the Supreme Court of the State of Texas, and in view of the decision rendered by said court, it was deemed advis-

[1] *Applied Business Finance* (A. W. Shaw Company, Chicago), 3rd ed., p. 468.

able to revise the form so that all doubt as to non-negotiability would be removed.

The revised form, which bears the notation: "The transaction which gives rise to this instrument is the purchase of goods by the acceptor from the drawer. The drawee may accept this bill, payable at any bank, banker or trust company in the United States, which such drawee may designate," has the approval of the Federal Reserve Board.

The revised form is being rapidly adopted throughout the country and can be obtained from the American Acceptance Council. Information as to the volume of business that is being done with trade acceptances is not available, but we believe, judging from the facts that have come to our attention, that substantial progress is being made with this valuable credit instrument. Wherever it has been given a full, fair trial, it has proven its merits.

Admitting that the acceptance method of financing has gained a permanent foothold in America, that it has gone beyond the experimental stage, and that to have developed it to its present high state of efficiency in less than fifteen years is an unmatched accomplishment, we must not forget that we are favored all along by unusual conditions and that these conditions are now rapidly changing and may turn against us. Dollar credits are doing valuable service throughout the civilized world. Competition is growing keener, and to maintain the dollar in its present position and to expand its usefulness to commerce and industry here and abroad will call for the matching of talent with bankers on the other side who have a background of centuries of experience in the acceptance business. We believe every effort should therefore be made to strengthen and further improve our facilities. A broad discount market is an indispensable part of our financial system, and a close study of the market should be made by bankers in the important centers throughout the country. The facilities of the market can be utilized by hundreds of banks that do not now avail themselves of them.

16. Bank Acceptances

A bank acceptance is a draft accepted by a bank. Frequently shipments of merchandise are made and the bill of lading with draft attached forwarded. By accepting the draft a bank located at the point of consignment secures possession of the goods. The bank's credit renders such an instrument readily negotiable. The National Bank Act for-

bade national banks to accept drafts drawn against them, but with the inauguration of the Federal Reserve System these acceptances have come into wide vogue. A bank acceptance does not represent an actual transfer of goods as does the trade acceptance. It does indicate that the bank accepts drafts to the extent arranged for by some interested party. In this country bank acceptances are employed chiefly to finance imports and exports.

To illustrate, assume that a Chicago merchant desires to import certain goods from Brazil. He arranges with his bank in Chicago to extend him a line of credit. The banker thus agrees to permit the exporter to draw a draft against it and to accept this draft when presented with certain supporting documents.

The acceptance stamped on the face of the draft at time of acceptance is shown in Form 173.

FORM 173

ACCEPTANCE STAMPED ON FACE OF DRAFT

ACCEPTED

PAYABLE AT MATURITY IF DESIRED AT
THE FIRST NATIONAL BANK
OF THE CITY OF NEW YORK

MARCH 9, 1929

THE FIRST NATIONAL BANK
OF CHICAGO

By.....

Forms 174, 175, 176, and 177 are stamped on the draft in accordance with the requirements of the Federal Reserve Board, the particular one to be used depending on the conditions.

FORM 174

This acceptance arises out of a transaction involving importation of.....
from..... to.....

FORM 175

This acceptance arises out of a transaction involving exportation of.....
from..... to.....

FORM 176

At time of acceptance, this bill was accompanied by shipping documents evidencing the domestic shipment of.....
from..... to.....

FORM 177

This bill was secured at the time of acceptance by independent warehouse, terminal or other similar receipt conveying security title to.....stored in .....and the acceptor will remain secured throughout the life of the bill.

By means of a commercial letter of credit, Form 178, the Chicago bank notifies the Brazilian exporter, or his bank, that an acceptance credit not in excess of a given sum has been opened by the importer. The exporter may now draw his draft which, accompanied by a bill of lading and other papers, he discounts with his banker in Brazil. The Brazil banker sends it to Chicago, where in due time it is accepted by the Chicago bank, which turns the bill of lading over to the Chicago importer after the latter pays the face of the draft or puts up collateral sufficient to guarantee payment at maturity. In some instances the bank may simply require

the importer to sign, a "trust receipt" (Form 179) whereby he is empowered to sell or otherwise dispose of the goods for the account of the bank. For a discussion of trust receipts from the legal point of view, see *Cornell Law Rev.*,

FORM 178

COMMERCIAL LETTER OF CREDIT

ILLINOIS MERCHANTS TRUST COMPANY

COMMERCIAL LETTER OF CREDIT
ORIGINAL

_____ No. _____

Chicago, U.S.A. _____

To _____

We hereby authorize you to draw at _____
on _____
for _____ *in all*
for account of _____
for invoice cost of _____
_____
to be shipped to _____

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH

BILLS OF LADING TO ORDER OF _____

SHIPMENTS TO BE COMPLETED DRAFTS DRAWN AND ADVICE THEREOF SENT TO US BEFORE _____

DRAFTS TO BE ACCOMPANIED BY ABSTRACT OF INVOICE. ONE OF EACH BILL OF LADING ISSUED AND A LETTER SIGNED BY THE NEGOTIATING BANK STATING THAT THE REMAINING BILLS OF LADING TOGETHER WITH CERTIFIED INVOICES AND CONSULAR CERTIFICATES HAVE BEEN SENT TO

_____

DRAFTS TO BEAR THE WORDS "DRAWN UNDER ILLINOIS MERCHANTS TRUST COMPANY COMMERCIAL LETTER OF CREDIT NO _____

DATED _____

INSURANCE _____

_____

_____

ALL PAYMENTS UNDER THIS CREDIT MUST BE ENDORSED ON BACK HEREOF

We hereby agree with the drawers, endorsers and bona fide holders of Bills drawn under and in compliance with the terms of this Credit that the same shall be duly honored.

ILLINOIS MERCHANTS TRUST COMPANY

_____

VICE PRESIDENT OR MANAGER

January, 1921. Before the acceptance matures the importer must supply his bank with funds sufficient to pay the draft.

Bankers' acceptances are drawn for varying maturities from one month to one year, according to the requirements.

Sometimes bank acceptances are employed to finance the carrying of staples in storage, in which case the collateral takes the form of a "warehouse receipt."

FORM 179

TRUST RECEIPT

CHICAGO, March 9, 19 28.

RECEIVED IN TRUST FROM ILLINOIS MERCHANTS TRUST COMPANY

Bill of lading and consular invoice covering shipment of 500 casks of olives steamer "Cardonia" shipped by Diego Gomez y Hermano, Seville.....

AND THE UNDERSIGNED HEREBY UNDERTAKE TO HOLD SAID PROPERTY FOR THE ACCOUNT OF AND SUBJECT TO THE ORDER OF THE SAID COMPANY, FOR THE PURPOSE OF BEING SOLD, OR OTHERWISE DEALT WITH, AS THE SAID COMPANY MAY DIRECT, AND IF AND WHEN SAID PROPERTY IS SOLD, TO PAY THE PROCEEDS THEREOF TO SAID COMPANY. THE UNDERSIGNED HEREBY ACKNOWLEDGE THEMSELVES TO BE BAILEE OF SAID PROPERTY FOR SAID COMPANY.

Investment securities are used less frequently as collateral to finance loans with bankers. The more usual forms of collateral are the warehouse receipt, bill of lading and trust receipt. For ordinary commercial purposes banks prefer unsecured loans, because requiring collateral is apt to reflect upon the borrower's credit, hence upon the quality of the notes in the bank's portfolio.

Form 180 is an application for a commercial letter of credit.

Form 181 is a general commercial letter of credit agreement.

Form 180

Application for Commercial Letter of Credit

ILLINOIS MERCHANTS TRUST COMPANY

FOREIGN BANKING DEPARTMENT

APPLICATION FOR COMMERCIAL LETTER OF CREDIT

CHICAGO,_____

L/C NO._____

TO BE OPENED BY MAIL OR CABLE_____

IRREVOCABLE (CONFIRMED)_____

IN FAVOR OF_____

ADDRESS_____

DRAFTS AT_____

ON (CITY)_____

AMOUNT_____

FOR INVOICE COST OF_____

_____

TO BE SHIPPED TO_____

BILLS OF LADING TO ORDER OF_____

SHIPMENTS TO BE COMPLETED, DRAFTS DRAWN AND ADVICE THEREOF SENT TO YOU BEFORE_____

DRAFTS TO BE ACCOMPANIED BY ABSTRACT OF INVOICE, ONE OF EACH BILL OF LADING ISSUED AND A LETTER SIGNED BY THE NEGOTIATING BANK STATING THAT THE REMAINING BILLS OF LADING TOGETHER WITH CERTIFIED INVOICES AND CONSULAR CERTIFICATES HAVE BEEN SENT TO_____

SPECIAL DOCUMENTS, IF ANY_____

_____

INSURANCE_____

TO BE OPENED THROUGH_____

_____

NAME OF APPLICANT_____

APPROVED BY BY_____

_____

FORM 181

GENERAL COMMERCIAL LETTER OF CREDIT AGREEMENT

TO ILLINOIS MERCHANTS TRUST COMPANY:

In consideration of your issuing one or more Letters of Credit to us or extending credit to us (herein called "The Credit"), we hereby agree as follows:

As to drafts or acceptances under or purporting to be under the Credit, which are payable in United States Currency, we agree: (a) in the case of each sight draft, to reimburse you at your office, on demand, in United States gold coin, the amount paid on such drafts, or, if so demanded by you, to pay to you at your office in advance in such coins the amount required to pay such draft; and (b) in the case of each acceptance, to pay to you, at your office, in United States gold coin, the amount thereof, on demand but in any event not later than one business day prior to maturity, or, in case the acceptance is not payable at your office, then on demand but in any event in time to reach the place of payment in the course of the mails not later than one business day prior to maturity.

As to drafts or acceptances under or purporting to be under the Credit, which are payable in currency other than United States currency, we agree: (a) in the case of each sight draft, to reimburse you, at your office, on demand, the equivalent of the amount paid, in United States gold coin at the rate of exchange then current in Chicago for cable transfers to the place of payment in the currency in which such draft is drawn; and (b) in the case of each acceptance, to furnish you, at your office, on demand, but in any event in time to reach the place of payment in the course of the mails not later than one business day prior to maturity with first class bankers' demand bills of exchange to be approved by you for the amount of acceptance, payable in the currency of the acceptance and bearing our endorsement, or, if you so request to pay to you, at your office, on demand, the equivalent of the acceptance in United States gold coin at the rate of exchange current in Chicago for cable transfers at time of transmission to the place of payment in the currency in which the acceptance is payable.

We also agree to pay you, on demand such commission and interest as are provided for in the agreement or order for the particular credit and if no provision be therein made for such payments then a commission at the rate of.....per cent (.....%), on such part of the Credit as may be used, and, in any event, a minimum commission of.....per cent, of the amount of the Credit and interest at the rate of..... per cent per annum; and we agree to pay to you on demand all charges and expenses paid or incurred by you in connection therewith.

We hereby recognize and admit your ownership in and unqualified right to the possession and disposal of all property shipped under or pursuant to or in connection with the Credit or in any way relative thereto or to the drafts, drawn thereunder, whether or not released to us on trust or bailee receipt, and also in and to all shipping documents, warehouse receipts, policies or certificates of insurance and other documents accompanying or relative to drafts drawn under the credit, and in and to the proceeds of each and all of the foregoing, until such time as all the obligations and liabilities of us or any of us to you at any time existing under or with reference to the Credit or this agreement, or any other credit or any other obligation or liability to you, have been fully paid and discharged, all as security for such

obligations and liabilities; and that all or any of such property and documents, and the proceeds of any thereof, coming into the possession of you or any of your correspondents, may be held and disposed of by you as hereinafter provided; and the receipt by you, or any of your correspondents, at any time of other security, of whatsoever nature, including cash, shall not be deemed a waiver of any of your rights or powers herein mentioned.

Except insofar as instructions have been heretofore given by us in writing expressly to the contrary, we agree that you and any of your correspondents may receive and accept as "Bills of lading" under the Credit, any documents issued or purporting to be issued by or on behalf of any carrier which acknowledge receipt of property for transportation, whatever the specific provisions of such documents, and that the date of each such document shall be deemed the date of shipment of the property mentioned therein; and that you may receive and accept as documents of insurance either insurance policies or insurance certificates.

Except insofar as instructions have been heretofore given by us in writing expressly to the contrary, we agree that part shipments may be made under the Credit and you may honor the relative drafts; and that if the Credit specifies shipments in installments within stated periods, and the shipper fails to ship in any designated period, shipments of subsequent installments may nevertheless be made in their respective designated periods and you may honor the relative drafts.

We agree that in the event of any extension of the maturity or time for presentation of drafts, acceptances or documents, or any other modification of the terms of the Credit, at the request of any of us, with or without modification to the others, or in the event of any increase in the amount of the Credit at our request, this agreement shall be binding upon us with regard to the Credit so increased or otherwise modified, to drafts, documents and property covered thereby, and to any action taken by you or any of your correspondents in accordance with such extension, increase or other modification.

The users of the Credit shall be deemed our agents and we assume all risks of their acts and omissions. Neither you nor your correspondents shall be responsible: for the existence, character, quality, quantity, condition, packing, value, or delivery of the property purporting to be represented by documents; for any difference in character, quality, quantity, condition, or value of the property from that expressed in documents; for the validity, sufficiency, or genuineness of documents, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; for the time, place, manner or order in which shipment is made; for partial or incomplete shipment, or failure or omission to ship any or all of the property referred to in the Credit; for the character, adequacy, validity, or genuineness of any insurance; for the solvency or responsibility of any insurer, or for any other risk connected with insurance; for any deviation from instructions, delay, default or fraud by the shipper or anyone else in connection with the property or the shipping thereof; for the solvency, responsibility or relationship to the property of any party issuing any documents in connection with the property; for delay in arrival or failure to arrive of either the property or any of the documents relating thereto; for delay in giving or failure to give notice of arrival or any other notice; for any breach of contract between the shippers or venders and ourselves or any of us; for failure of any draft to bear any reference or adequate reference to the Credit, or failure of documents to accompany any draft at negotiation, or failure of any person to note the amount of any draft on the

reverse of the Credit or to surrender or take up the Credit or to send forward documents apart from drafts as required by the terms of the Credit, each of which provisions, if contained in the Credit itself, it is agreed may be waived by you; or for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, wireless or otherwise, whether or not they be in cipher; nor shall you be responsible for any error, neglect, or default of any of your correspondents; and none of the above shall affect, impair, or prevent the vesting of any of your rights or powers hereunder. In furtherance and extension and not in limitation of the specific provisions hereinbefore set forth, we agree that any action taken by you or by any correspondent of yours under or in connection with the Credit or the relative drafts, documents or property, if taken in good faith, shall be binding on us and shall not put you or your correspondent under any resulting liability to us; and we make like agreement as to any inaction or omission, unless in breach of good faith.

We agree to procure promptly any necessary import and export and other licenses for the import or export or shipping of the property and to comply with all foreign and domestic governmental regulations in regard to the shipment of the property or the financing thereof, and to furnish such certificates in that respect as you may at any time require, and to keep the property adequately covered by insurance satisfactory to you, in companies satisfactory to you, and to assign the policies or certificates of insurance to you, or to make the loss or adjustment, if any, payable to you, at your option; and to furnish you if demanded with evidence of acceptance by the insurers of such assignment.

Each of us agrees at any time and from time to time, on demand, to deliver, convey, transfer, and assign to you, as security for any and all of his and/or our obligations and liabilities hereunder, and also for any and all other obligations and liabilities, absolute or contingent, due or to become due, which are now or may at any time hereafter be owing by him or us to you, additional security of a value and character satisfactory to you, or to make such payment as you may require. Each of us agrees that all property belonging to him, or us, or in which he or we may have an interest, of every name and nature whatsoever, now or at any time hereafter delivered, conveyed, transferred, assigned, or paid to you, or coming into your possession or into the possession of anyone for you in any manner whatsoever, whether expressly as security for any of the obligations or liabilities by him or us to you, or for safe-keeping or otherwise, and all items received for collection or transmission and the proceeds thereof whether or not such property is in whole or in part released to us on trust or bailee receipt are hereby made security for each and all such obligations and liabilities. Each of us agrees that upon his or our failure at any time to keep a margin of security with you satisfactory to you, or upon the making by him or us of any assignment for the benefit of creditors, or upon the filing of any voluntary or involuntary petition in bankruptcy by or against him or us, or upon the application for the appointment of a receiver of any of his or our property, or upon any act of bankruptcy or state of insolvency of him or us, all of such obligations and liabilities shall become and be immediately due, and payable without demand or notice, notwithstanding any credit or time allowed to him or us, or any instrument evidencing any such obligations or liabilities or otherwise; and each of us, as to property in which he may have any interest, and all of us, as to property in which we may have any interest expressly authorize you in any such event, or upon his or our failure to pay any of such obligation or

liability when it or they shall become or be made due, to sell immediately, without demand for payment, without advertisement and without notice to us or any of us, all of which are hereby expressly waived, any and all such securities and property, arrived or to arrive, at private sale or at public auction or at brokers' board or otherwise, at your option, in such parcel or parcels and at such time or times and at such place or places and for such price or prices and upon such terms and conditions as you may deem proper and you are also given the right, power and authority, in your discretion, to collect or cause to be collected or otherwise to convert into money, all or any part of said securities and property; and you may, in your discretion, enforce the collection of said securities, with the additions thereto and substitutes therefor, by suit or otherwise, and may surrender, compromise, release, renew, extend or exchange any or all of said securities and property, and you may apply the net proceeds of such sale or sales, collection, exchange or conversion together with any balance of deposits and any sums credit by or due from you to him or us in general account or otherwise, to the payment of the costs, expenses and attorneys' fees incurred in respect to said securities and property, and the sale, collection, exchange or conversion thereof, and to the payment of any and all of his and/or our obligations or liabilities to you however arising and whether due or to become due. If any such sale be at brokers' board or at public auction you may yourself be a purchaser at such sale, free from any right of redemption which we and each of us hereby expressly waive and release. You are, however, released from all obligation or liability to collect any of said securities or to bind or hold any maker or endorser thereof.

You shall not be deemed to have waived any of your rights hereunder, unless you or your authorized agent shall have signed such waiver in writing. No such waiver, unless expressly as stated therein, shall be effective as to any transaction which occurs subsequent to the date of such waiver, nor as to any continuance of a breach after such waiver.

The word "property" as used in this agreement includes goods, merchandise, securities, funds, choses in action, and any and all other forms of property, whether real, personal or mixed and any right or interest therein.

If this agreement is signed by one individual, the terms "we," "our," "us," shall be read throughout as "I," "the undersigned," "my," "me," as the case may be. If this agreement is signed by two or more parties, it shall be the joint and several agreement of such parties.

Very truly yours,

.....

.....

.....

Approved by

.....

17. Work of Commercial Discount Houses

Sometimes the work of the finance company and of the commercial discount company are combined in one concern, but since the functions of the two are distinct and are frequently performed by separate concerns they are treated separately in this volume. The commercial discount house

buys or discounts accounts receivable as well as notes and acceptances receivable of concerns which desire to realize cash in advance of the fixed or expected date of maturity of such accounts, notes and acceptances. The amount which

Form 182

Contract Form Used by Commercial Discount House

This Agreement entered into between

of designated as first party, and AMERICA CREDIT COMPANY, a Delaware corporation, its successors or assigns, designated as second party,

Witnesseth, That Whereas, first party is desirous of selling to second party Open Accounts Receivable, Notes, Acceptances, Drafts, Leases, Mortgages, Contracts and Choses in Action, hereinafter designated as "Accounts", purporting to evidence sales and deliveries of personal property usually dealt in by first party or work and labor done by first party,

Now, Therefore, in consideration of the premises, the statements made to second party regarding the financial condition of first party and the mutual covenants hereinafter set forth, the parties hereby agree as follows:

First. Second party will from time to time, during the continuance of this agreement, buy such Accounts belonging to first party as may be acceptable to second party, and will pay therefor

One hundred per cent. (100%) of the face value thereof, less a charge equal to the highest legal contract rate of interest on the money outstanding thereon, of which per cent. of the face value thereof shall be paid in cash upon acceptance thereof by second party, and the remaining per cent. less any deductions and plus any overpayments by the debtors and less total charges (including therein the interest above mentioned), as shown in lines 42 to 46 hereof, to be paid to first party immediately upon payment of any such Accounts to second party; provided, that no payments of any such remainder need be made so long as any Accounts purchased hereunder are affected by any breach of contract or violation of warranty hereunder, but such remainder and any moneys, Accounts or property of first party which may come into possession of second party may be held and later applied to the payment of any Accounts or any indebtedness. Each such purchase of Accounts hereunder shall constitute and be considered a transaction separate from and independent of every other such purchase, but all such purchases shall be subject to and governed by each and every of the provisions of this agreement.

Second. Second party shall: (a) Place its Collection Department at the disposal of first party and endeavor to make collections of the Accounts purchased, but first party in order to avoid objections by, and possible loss of trade from, any of its customers through second party collecting any open accounts direct from the debtors, shall have the right and privilege to receive remittances at the office of first party for all open accounts sold to second party; said right and privilege may be terminated by second party at any time, and shall terminate immediately upon any breach of contract or violation of warranty by first party, the suspension of business, request for general extension, filing of petition in bankruptcy or receivership, or any act amounting to a business failure by or against first party, and shall be terminated as to any Account whenever second party shall notify the debtor of the assignment of such Account to second party by first party. (b) Verify a portion of the open accounts and send to the place of business of first party, from time to time, one of its auditors, who shall (the right to do so at all times being hereby given by first party) inspect, audit, check, and make extracts from the books, accounts, records, orders, original correspondence and other papers of first party relating to Accounts sold hereunder, as provided in any Fidelity Bond which may be obtained by second party, or as required by any sureties or guarantors of this agreement. (c) Pay the salaries and expenses of travel of the auditors required by the method of collection set out in clause "a" hereof. (d) Have its auditor give first party copy of his report of each examination as above, with full information and advice as to the most desirable method of keeping the books, records and accounts of first party. (e) Place its Credit Department at the disposal of first party and furnish by mail to first party, upon request, its credit information in hand concerning the customers of first party; pay for all accounting, postage and credit investigation of Accounts purchased or offered for purchase hereunder, and upon request give credit and financial advice. (f) Permit first party to submit any of its sales contracts with its customers to the General Counsel of second party for advice and opinion as to the form and legality thereof. (g) Accept at par subject to payment all remittances received through first party, and pay the cost of all exchange on points within the United States. (h) Obtain and have on hand at all times sufficient funds to make prompt remittance to first party for all acceptable Accounts. (i) Supply all forms proper for assignment of Accounts hereunder.

Third. The total compensation to be paid by first party for all services and other considerations specified in lines 21 to 41 hereof, and for the charge as mentioned in line 11 hereof, shall be

One Thirtieth of one-per cent (1-30 of 1%) of the face value of Accounts for each day from date of purchase by and until paid to second party, plus $5. per $1,000. only on the first $100,000. of Accounts purchased within any 12 successive months' period.

Fourth. In consideration of the prompt purchase and remittance by second party for Accounts acceptable to second party, without waiting to make a complete credit investigation thereof, first party hereby warrants that: (a) First party and each debtor named in an Account is solvent and will remain so until maturity thereof. (b) There will be no suspension of business, request for general extension, petition in bankruptcy or receivership or any act amounting to a business failure by or against first party or any debtor. (c) No debtor named in any Account will object to the payment for, or the quality or quantity of, the property sold or work and labor done by first party, evidenced by such Account or will reject, return, fail or refuse to accept, receive and retain any or all of any property represented by said Account. (d) Second Party will receive in full at maturity the full face amount due upon every account purchased hereunder in cash or Baltimore par funds. (e) It will transmit or deliver to second party at its office in Baltimore, Maryland, on the day of receipt thereof, all original checks, drafts, notes, acceptances and other evidences of payment received in payment of, or on account of, any Accounts purchased hereunder. (f) Prompt payment will be made to second party for the amount of any allowance or credit on any Account sold to second party or for any deduction to be made by reason of any rejection, return, failure or refusal to accept any merchandise. (g) Each account offered for sale to second party shall represent a bona fide sale and delivery of property usually dealt in by first party or work and labor done by first party, and shall be for a certain, undisputed, liquidated claim or demand, which is due or to become due on the dates set forth, and that the payment thereof is not subject to any setoff and/or counterclaim or contingent upon the fulfillment of any contract or upon any condition whatsoever. (h) First party will not sell or assign any of its own Accounts elsewhere without first giving ten days' written notice to second party of such intention.

Fifth. Contemporaneously with the purchase of Accounts hereunder, first party will, by proper instrument in writing, assign and set over to second party such Accounts purchased by it as aforesaid, and thereupon second party shall become and be entitled to all of the rights, securities or guaranties possessed by first party in respect thereto, including the right of stoppage in transit should the latter right be exercised, or should the debtor named in any Account, refuse, fail or refuse to accept, receive or retain the property evidenced by such Account, or should said property be rerouted or reconsigned, then said property or property exchanged therefor, and any new Account created through the resale thereof with or without consent of second party, shall be treated as having been sold hereunder by first party to second party, with all the rights of absolute ownership thereof, and first party will deliver said property or assign said Account to second party, or will hold same in trust for and subject to the orders of second party, and first party will at once purchase and pay for said property, at the net invoice value thereof. Immediately upon consummation of the purchase of Accounts hereunder, first party will make upon its books suitable and proper entries disclosing the absolute sale of said Accounts to second party. First party further will execute and deliver to second party any instrument necessary, proper or convenient to carry into effect the terms, provisions and conditions of this agreement, or to facilitate the collection of Accounts purchased hereunder.

Sixth. If any warranty, expressed or implied, made herein or resulting from the provisions hereof with respect to any Account or made in or resulting from the provisions of the assignment of any Account to second party or from the subject matter hereof, shall be broken or violated, either through the act of first party or others, the damages to which second party shall be entitled to recover from first party, as a result thereof, shall include all attorneys' fees, Court costs and all other expenses which may be expended or incurred by second party to obtain or to enforce payment of any Account purchased hereunder, either against the debtor, first party, or any of its guarantors, or in the prosecution or defense of any action or concerning any matter growing out of or connected with the subject matter of this contract and Accounts purchased hereunder. The waiver by second party of any breach of this agreement shall not be construed or act as a waiver of any subsequent breach. Granting extensions to, or adjustments of claims of, debtors named in Accounts purchased hereunder, compromises, compositions or settlements of such Accounts, or with respect to any security or insurance applying thereon, either with the debtor or others, or the sale, assignment or transfer by second party of Accounts hereunder, or of any merchandise or other security applying thereon for less than the face value thereof, shall not affect the liability of first party under any of its warranties as herein provided.

Form 182 *(Continued)*

Seventh. First party does hereby authorize any person whom second party may designate, to receive, open and dispose of all mail addressed to first party; to endorse the name of first party upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or collateral that may come into the possession of second party as payment of or upon Accounts purchased by it hereunder, to endorse the name of first party on any invoice, freight or express bill or bill of lading relating to any said Account; to sign the name of first party to drafts against debtors, to assignments and verifications of Accounts and notices thereof to debtors; and to do all other things necessary or proper to carry out the intent of this agreement.

Eighth. Neither of the parties hereto shall be bound by anything not expressed in writing by and between the parties; this agreement and all of its provisions shall inure to and become binding upon the parties, their heirs, executors, administrators, successors and assigns. this agreement and all acts, agreements, certificates, assignments, transfers and transactions hereunder, and all rights of the parties hereto shall be governed as to validity, enforcement, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Delaware; first party hereby waives presentment, demand and protest of any note, draft or other evidence of payment, and waives all notice of any other matter to which it might otherwise be entitled; either party hereto shall have the right at any time upon written notice to cancel this agreement as to future transactions; this agreement shall not become effective until accepted by two duly authorized officers of second party at Baltimore, Maryland.

In Witness Whereof, first party has caused these presents to be executed this day of 192 .

Attach Corporate Seal Here

ATTEST or WITNESS } _____ *Secretary or Witness.*

SIGNED _____ [Seal]

By _____ [Seal]
President, Partner or Owner.

Accepted at Baltimore, Md., by AMERICA CREDIT COMPANY, this day of 192

Attach Corporate Seal Here

By _____
Vice-President, Treas., Ass't Treas. or Ass't Sec'y.

By _____
President, Vice-President, Treas. or Ass't Treas.

THE FOLLOWING GUARANTY AND WAIVER IS TO BE SIGNED BY INDIVIDUALS:

In consideration of the acceptance of the aforementioned agreement by "second party" and of other valuable considerations, the receipt of which is hereby acknowledged, the undersigned and each of them do hereby jointly and severally guarantee to second party, its successors or assigns, the full and prompt performance and discharge by first party of said agreement, and the payment, performance and discharge of each and every of the agreements, terms, provisions and conditions set forth in said agreement, and of any rider or riders to be thereto attached, and of any other instrument or instruments given or executed in pursuance thereof, provided to be done or discharged by first party, and the due execution of said instruments, provided, however, that as first party has the right and privilege under paragraph Second of the said agreement of receiving collections of any open account sold to second party, then, in order that such method of collection may not prejudice the interests of the undersigned guarantors, second party shall verify a portion of the open accounts and have the books and records of first party examined, as provided in paragraph Second of the said agreement, it being understood that this guaranty shall not be affected, impaired or nullified by the failure of such verification or examination to disclose any irregularities or wrong-doings of first party in connection with the assignment or collection of any Accounts sold to second party, or by the failure of second party to withdraw from first party the privilege of collecting said open accounts by reason of any act of commission or omission by first party. The undersigned and each of them do hereby agree: That this obligation shall in no wise be impaired or affected by any change in the amount of advance or in the rate of compensation provided in paragraphs First and Third that at any time or from time to time hereafter may be agreed upon by first and second parties; that second party, its successors or assigns, may exact such Fidelity Bond as it may determine; that the failure by second party, its successors or assigns, to exact, proceed under or to recover under a Fidelity Bond, or to exercise any rights or remedies it or they may have against first party or others, shall in no wise impair this obligation which is direct and unconditional, and shall continue until second party receives written notice revoking said liability as to future Accounts or transactions, and they and each of them do hereby waive, release, assign and transfer to second party, so far as the obligation herein is concerned, all rights in and to homesteads and exemptions to which they or any of them may be entitled under the laws of any State or States, and to any amounts owing the undersigned or any of them by first party.

This guaranty and waiver shall be binding upon my/our heirs personal representatives, successors and assigns and shall be construed and interpreted according to the laws and decisions of the State of Delaware. The undersigned hereby jointly and severally waive all notice of default by first party, and waive notice of acceptance of this guaranty by second party, and waive all other notices to which they might otherwise be entitled. The liability of the undersigned or any of them shall not be affected, impaired or diminished because of the fact that any paper writings and/or accounts received by Second Party be invalid, incorrect, defective, forged, fictitious, imperfect or insufficient.

In Witness Whereof, we have hereunto set our hands and seals this day of 192 .

WITNESS _____ SIGNED _____ [Seal]

WITNESS _____ SIGNED _____ [Seal]

WITNESS _____ SIGNED _____ [Seal]

WITNESS _____ SIGNED _____ [Seal]

WITNESS _____ SIGNED _____ [Seal]

WITNESS _____ SIGNED _____ [Seal]

a discount company will advance ranges from 65% to 85% of the face value of the accounts or notes. When it collects the accounts it remits the proceeds to the company discounting them, first deducting an amount to cover its expenses and afford a reasonable profit. As a rule concerns which discount their accounts also enjoy a line of credit at a bank, and use the discount scheme as a means of liquidating their

bank loans as occasion requires. Concerns too small to secure a market for commercial paper may adopt the plan of discounting accounts receivable as an alternative plan.

Contracts to discount accounts receivable will be found to vary as to details. Under the notification plan debtors of the company which discounts its accounts are notified of the assignment and that they are to pay directly to the discount company. However, the non-notification plan is more customary, whereby the customer pays to the company to which he has become indebted. This plan relieves the concern of the necessity of giving its customers any notice whatever, thus enabling it to avoid undesirable publicity.

The usual charge for discounting accounts is "one-twenty-fifth of one per cent a day on the net face amount of receivables, plus a charge of $5 per $1,000 on the first $100,000 of receivables within any twelve successive months."

A contract employed by a commercial discount house is shown in Form 182.

18. Warehouse Receipts

The following information relative to warehouse receipts is derived from *The Merchandise Warehouse in Distribution,* published in 1925 by the U. S. Department of Commerce. It contains thirty-three pages and may be secured from the Superintendent of Documents, Washington, D. C., for 10 cents.

There are six different kinds of warehouses:

1. Merchandise.
2. Household goods and furniture storage.
3. Bonded warehouses (U. S. Customs and U. S. Internal Revenue, etc.)
4. Special commodity warehouses (cotton, tobacco, wool, etc.)
5. Cold storage, principally for perishable foods.
6. Field warehouses.

As a means of working capital financing the merchandise warehouse is of chief interest. It is used for storage of goods by the manufacturer or shipper until the retailer or distrib-

utor needs them to supply his customer; hence it is a service link between producer and consumer.

Since the war the service which the public warehouse renders has been materially changed, so much so that the warehouseman today is really a distributor of merchandise, shipping it to jobbers and retailers in l. c. l. deliveries, rather than caring for the storage of large quantities of goods remaining in storage for two months or more. Before the war it was customary for warehousemen to receive large consignments of 50 or more carloads of one commodity to be stored, from which deliveries throughout the remainder of the year would be made either by the owner or his broker. Since these consignments usually consisted of a very few varieties or assortments, use of storage facilities was possible at a minimum cost because of the space and handling necessary and because of lessened overhead expense.

Today it is more frequently the case that only one carload of a single product is received by the warehouseman from each of a number of different shippers, representing as many different commodities as there are cars, and in a number of cases many assortments in a single car. Instead of these car lots of goods being stored, frequently a portion of the load is wanted for delivery upon arrival and is ordered to be forwarded by the warehouseman to points in the city in which the warehouse is located; the remainder is placed in storage as spot stock, against which the owner or broker will draw to meet the demands of his customers.

It is to the advantage of the jobber or retailer to keep his stock as low as practicable because of the resultant rapid capital turnover. Since the retailers and jobbers do not carry large stocks of goods, purchasing merchandise more frequently and then buying only small quantities of any product, it has become necessary for the manufacturer to maintain sufficient stock of his merchandise at a central point for distribution in order to supply the needs of his trade.

What the Merchandise Warehouse Does

In this process of distributing from producer to consumer the merchandise warehouse of today renders a service that has many advantages, and all of them tend to lessen the spread between producer's and consumer's prices by lessening the waste in time, in transportation costs, and in merchandise.

1. The merchandise warehouse receives goods in carloads and distributes them in smaller quantities to jobbers or retailers, or reships in l. c. l. amounts to nearby centers.

2. It enables the manufacturers to keep spot stocks for their customers, and this quick service from goods available on demand increases sales.

3. It equalizes production by steadily absorbing the manufacturers' output while eliminating heavy investment in reserve storage space.

4. *It issues negotiable and non-negotiable receipts and, if desired, allows credit to be obtained on merchandise stored.*

5. It provides insurance and keeps fire risk at a minimum through separation of stocks stored and through maintenance of sprinkler systems.

6. It reduces freight charges. Car lots are carried at a lower rate per hundred pounds than l. c. l. shipments, and the warehouse provides a center for breaking these carload shipments which is much nearer to the points of final distribution. Often the storage service can be paid for by the transportation charges saved.

7. It saves time in transit, for car lots travel in through trains by direct routes.

8. It reduces loss and damage claims, because of resultant minimum handling in car-lot shipments.

9. It provides recoopering, marking, and separation of varieties, and offers clerical services such as invoicing when reshipment occurs.

10. It eliminates the necessity of providing large storage space at the point of origin, especially for seasonal commodities on which provisional space would be idle investment during the greater part of the year.

Credit Facilities

The manufacturer need not be embarrassed by having a large amount of capital tied up while his goods are awaiting consumption demand. After the goods are warehoused and a negotiable receipt is issued, arrangements can be made, either through banks in the warehouse district or at point of origin, and credit obtained upon surrender of the properly indorsed credit instrument—a negotiable warehouse receipt. Thus not only does the manufacturer succeed in availing himself of the advantages offered by carload shipments of his goods and obviate the necessity of heavy capital investment for storage facilities which would be used only a part of the year, but his production is so cared for that it can be evenly distributed throughout the year, resulting in a minimum production cost and at the same time insuring efficient and ready delivery when demand for his product occurs.

A warehouse, therefore, not only offers distributing service to the manufacturer of staple commodities in general demand throughout the year, but offers services especially desirable to the manufacturer of seasonal products.

19. Use of Warehouse Receipts

Whenever goods are placed in storage the warehouse company issues a memorandum or receipt to the owner, on which is a complete description of the merchandise. The receipt also shows when the goods were received, the freight bill number and car number, any charges for coopering or weighing, any advances made for cartage or transportation, and the handling and storage rates.

There are two kinds of warehouse receipts, negotiable and non-negotiable. If desired, the negotiable receipt may be used as collateral for credit, and frequently loans up to 70 per cent of the value of the commodity stored are granted. This is not unusual on staple goods. Especially on seasonal products are such loans important, for they permit the manufacturer to produce goods, ship them to a warehouse in a distributing center, and be relieved of the large capital tie-up by making use of the credit facilities offered and placing his negotiable receipt as collateral.

Whether or not a receipt is negotiable is stamped across its face, and on the back of the negotiable instruments are the indorsement spaces. This is the only difference, generally, in the form of the two kinds of receipts.

. . . . . .

The negotiable warehouse receipt is an important instrument in credit transactions today. For any manufacturer or shipper who desires to avoid heavy capital investment which does not permit flexibility of use, it is a direct means of obtaining necessary working capital based upon actual available output as the guaranty of payment. A warehouse company will frequently advance loans upon commodities stored. Such loans are rediscounted by the company at its bank.

When goods are placed in a central distributing storage house prior and subject to order of various jobbers or retailers, the amount of money held out of use—dependent upon the value of the commodities stored—is generally a large sum. Short-time loans readily available upon presentation of proper documents immediately bring these goods into our credit structure, and permit the owner to eliminate any secular trend or large "peaks and valleys" in his costs of production and distribution. A manufacturer of hats or gloves, for example, would find it costly to

attempt to produce his goods just when demand called for the product. By such production methods costs are at a maximum. If the manufacturer has an even production and during months of weak demand stores his goods, he need not bear the burden of capital tie-up; that is what banks are for, and the negotiable storage receipt is a good bona fide credit instrument.

Many producers are taking advantage of the credit possibilities offered by the negotiable warehouse receipt. The use of this collateral paper, however, is not as widespread as the opportunities allow, and growth in the credit feature of warehouse services generally is to be expected.

For form of non-negotiable warehouse receipt see Form 183.

The following is reproduced by permission from *Warehouse Receipts as Collateral,* published by American Warehousemen's Association, Pittsburgh, Pennsylvania. This pamphlet contains the full text of the Uniform Warehouse Receipts Act.

20. Kinds of Warehouse Receipts

A warehouse receipt is an acknowledgment of the warehouseman that he has received on storage certain goods which will be delivered on demand, provided the terms of the receipt are complied with.

The Uniform Warehouse Receipts Act specifies two distinct forms of warehouse receipt, negotiable and non-negotiable. Each form has a separate function. Whether it be of the negotiable or non-negotiable form, each warehouse receipt must, in accordance with the law, specify:

(*a*) The location of the warehouse where the goods are stored.
(*b*) The date of issue of the receipt.
(*c*) The consecutive number of the receipt.
(*d*) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.
(*e*) The rate of storage charges.
(*f*) A description of the goods or of the packages containing them.
(*g*) The signature of the warehouseman, which may be made by his authorized agent.
(*h*) If the receipt is issued for goods of which the warehouse-

Form 183

Non-Negotiable Warehouse Receipt

ORIGINAL

Copyright 1924 American Warehousemen's Association
National Furniture Warehousemen's Ass'n.
Standard Form 106-H
Approved by Dept. of Commerce of U. S.

WAREHOUSE RECEIPT.

The American Warehouse Company

2121 American Ave.
America

Lot No._____ Date_____ 192____

RECEIVED for the account of_____

for storage, the goods enumerated in the schedule below, upon the following terms and conditions, said goods stored in warehouse located at No._____

NEGOTIABLE

(1) The OWNER assumes ALL RISKS, and no Liability of any kind attaches to the Company for any loss or damage to said goods caused by moth, fire or deterioration.

(2) The Company is not to be held responsible for fragile articles injured or broken unless packed by its employees and unpacked by them at time of delivery.

(3) The Owner declares that the value of any article, piece, package or receptacle, including the contents thereof, packed, transported, received, stored, or handled in this lot, does not exceed the sum of FIFTY DOLLARS, upon which valuation the existing rates shown below have been based, and the owner, in consideration of said rates charged, hereby agrees that the liability of the company, for any cause which would make it liable in case of any loss or damage while said goods are in its possession, shall in no event exceed the sum so above declared, unless the owner declares a greater value in writing, and agrees to pay an additional charge of _____ cents per month for each $100.00 or fraction thereof in excess of the $50.00 already declared, in which case the said liability of the company shall not exceed the greater value so declared, for any cause which would make it liable.

(4) The notice of any change of address shall be given in writing, and no notice of such change shall be valid or binding against the company if given in any other manner.

(5) The goods deposited will be delivered to the above-named owner, or to any other specified person on his or her behalf on presentation of written authority from said owner, provided all storage and other charges are paid.

(6) All the above terms and conditions shall apply to any goods hereinafter stored for this account.

(7) No person is authorized to make any other agreement or condition on behalf of the Company.

(8) Storage rate $_____ per month.

The American Warehouse Company

By_____

SCHEDULE OF GOODS

If not correct, please report immediately

man is owner, either solely or jointly or in common with others, the fact of such ownership, and

(*i*) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

The warehouseman, however, incurs liability for the omission of the foregoing on negotiable receipts only.

The two forms of receipts differ in actual use chiefly as to the manner in which right of possession of the goods covered by the receipts may pass from one party to another, and the manner in which delivery of the goods can be effected.

Negotiable Warehouse Receipts

A negotiable receipt may pass from hand to hand merely by endorsement in much the same manner as any other negotiable instrument. Right of possession of the goods covered by a negotiable receipt follows the ownership and possession of the receipt. Lawful delivery of goods covered by a negotiable warehouse receipt cannot be made without the surrender of the receipt properly endorsed. Care must be exercised by the holder of a negotiable receipt that it not be lost, misplaced or destroyed.

Non-Negotiable Receipts

The surrender of a non-negotiable warehouse receipt is not required by law. Delivery of goods covered by such a receipt, or transfer of the right to delivery on the books of the warehouseman, is accomplished through the written order of the party in whose name the goods are stored. Non-negotiable receipts must be so marked. Failure so to do may require the warehouseman to treat such receipts as negotiable.

Warehouseman's Lien

The warehouseman's lien for charges, advances, etc., may be enforced against all goods, whenever deposited, if stored under a non-negotiable receipt but the lien is specific under a negotiable receipt which must state charges for which the lien is claimed.

Adaptability of the Negotiable Warehouse Receipt

A negotiable warehouse receipt permits transfer of right of possession by mere endorsement. The negotiable receipt by reason of the ease of negotiation has certain distinct advantages which do not obtain in the case of non-negotiable receipts. A banker may, with reasonable safety, accept as collateral a duly endorsed negotiable receipt issued by a reputable warehouseman, provided he is satisfied with the endorsements and is sure that the goods are as represented. Care should, of course, be exercised to see that storage charges and other liens are fully paid through having receipted bills of the warehouseman filed with him monthly. In case the borrower desires to take delivery of a portion of the goods covered by a negotiable receipt it is necessary to either present the receipt to the warehouseman in order that there may be noted upon it the release of the quantity delivered, or surrender the original receipt and obtain a new one for the goods remaining undelivered.

Adaptability of the Non-Negotiable Receipt

When money is to be loaned on goods in storage and the banker obtains a non-negotiable receipt in his own name, the goods are under his sole control. In such a case the warehouseman will not permit delivery, or even inspection, of the goods without the written authority of the banker. In case the borrower is involved in litigation an attachment of the goods will not prevail as long as the receipt is in the name of the banker. The banker assumes no liability or diminution of security in the event of loss, misplacement or destruction of such a receipt, since the goods cannot be released without his written order. Partial deliveries can be made merely on the written order of the banker. Most of the warehousemen of the country issue non-negotiable receipts in exchange for negotiable receipts, or transfer goods covered by a non-negotiable receipt to another party, without making a charge for the additional non-negotiable receipt required.

Recommendation

For collateral use the American Warehousemen's Association recommends the non-negotiable warehouse receipt in the name of the banker as compared with the negotiable form.

Delivery Orders

In addition to the return of the negotiable receipt for complete delivery or endorsement of partial delivery, signed delivery orders

are required by the warehouseman regardless of the form of the warehouse receipt. Delivery orders do not require any particular form, but care should be taken to see that they specify to whom the goods are to be delivered, the location and description of the goods as stated in the receipt and the number of the receipt. The warehouseman is not obligated to deliver until his lien for storage and other charges is satisfied.

Transfer Orders

When the right of possession of goods covered by a warehouse receipt is to be transferred on the books of the warehouseman, a signed transfer order is required. Such orders differ from delivery orders only to the extent that they refer to the transfer, rather than the physical delivery, of the goods. Transfer orders should contain the same information as the delivery order, and, to be effective, all liens of the warehouseman must be satisfied. Frequently transfer orders are held for a considerable period by the party in whose favor they are made; to avoid liability for additional charges, persons issuing transfer orders should state on the orders that all charges accruing subsequent to the date of the order are to be paid by the transferee.

21. Uniform Warehouse Receipts Act

Practically all of the states have enacted the Uniform Warehouse Receipts Act. In the following extract therefrom dealing with the form and negotiability of warehouse receipts the section numbers refer to the law as enacted in New York:

§ 90. *Persons who may issue receipts.* Warehouse receipts may be issued by any warehouseman.

§ 91. *Form of receipts.* Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(*a*) The location of the warehouse where the goods are stored,

(*b*) The date of issue of the receipt,

(*c*) The consecutive number of the receipt,

(*d*) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,

(*e*) The rate of storage charges,

(*f*) A description of the goods or of the packages containing them,

(*g*) The signature of the warehouseman, which may be made by his authorized agent,

(*h*) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(*i*) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the foregoing terms.

A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

(*a*) Be contrary to the provisions of this article.

(*b*) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

§ 92. *Negotiable and non-negotiable receipts.* A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

A receipt in which it is stated that the goods received will be delivered to the bearer or to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

§ 93. *Duplicate receipts must be so marked.* When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

§ 94. *Failure to mark "not negotiable."* A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who pur-

chased it for value supposing it to be negotiable may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda or written acknowledgments of an informal character.

§ 98. *Negotiable receipts must be canceled or marked when goods or part thereof are delivered.* Except as provided in section one hundred and twenty-one, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Except as provided in said section one hundred and twenty-one, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

§ 111. *Creditors' remedies to reach negotiable receipts.* A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

§ 122. *Negotiation of negotiable receipts by delivery and by indorsement.* A negotiable receipt may be negotiated by delivery:

(*a*) Where, by the terms of the receipts, the warehouseman undertakes to deliver the goods to the bearer, or

(*b*) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

§ 131. *When negotiation not impaired by fraud, mistake or duress.* The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

§ 132. *Subsequent negotiation.* Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

§ 133. *Negotiation defeats vendor's lien.* Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or be justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

§ 138. *Delivery of goods without obtaining negotiable receipt.* A warehouseman, or any officer, agent or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the

cases provided for in sections one hundred and one hundred and twenty-one, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 139. *Negotiation of receipt for mortgaged goods.* Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

22. The Use of Credit to Finance Sales

Most of the buying and selling which constitutes modern business is done on a credit basis. This is particularly true of retail selling. So extensive has the time payment or instalment plan of selling become that the methods employed to finance these have been highly organized. Illustrative of this is the automobile sales business. Finance companies have been established whose sole business consists in taking over instalment contracts of retail dealers, thus making it possible for the retailer to operate on less capital than would otherwise be required. The finance companies themselves do not usually have sufficient capital to enable them to carry the contracts but in turn secure credit from banks using the contracts which they have purchased from the retailers as collateral.

The same principle of credit extension is employed in other lines. Many kinds of commodities are sold on the instalment plan and in some cases the dealer is compelled to hypothecate his accounts or notes receivable to secure cash required to meet current demands.

The details to be followed in securing the required protection where goods are sold on the instalment plan differ in different states, so that the necessary arrangement may require a lease, a chattel mortgage, or a conditional sale.

Finance companies, in case of the automobile business,

usually take their remuneration in the form of a fixed percentage of the cash price of the automobile, the rate varying according to the number of instalments, the time over which they run, and the make and price of the car.

The retailer, along with the lease, chattel mortgage, or conditional sale, takes the promissory note or notes of the purchaser. He assigns the lease, chattel mortgage, or conditional sale to the finance company and also turns over to the finance company the promissory notes properly endorsed.

23. Form of Conditional Sale Contract of Dependent Finance Company

Following (Form 184) is the form of conditional sales contract employed by dealers who discount their notes with the General Motors Acceptance Corporation in all states except Colorado, Louisiana, Michigan, Missouri, and Ohio. It is made out in triplicate, the original being sent to General Motors Acceptance Corporation, the duplicate original being filed or recorded according to state law, and the triplicate original being delivered to the purchaser. On the reverse side of the duplicate original space is provided for noting time of filing or recording by the proper clerk, or other official, also for insertion of acknowledgment or affidavit of notary public in states where required. The "Dealer's Recommendation, Assignment and Guaranty" appears only on the original.

On the reverse side of the original is the form for guaranty of payment of the deferred payments shown in Form 185.

GUARANTY

In consideration of the making of the within contract by the Dealer therein and/or the purchase thereof by General Motors Acceptance Corporation, the undersigned does hereby guarantee payment of all deferred payments as specified therein and covenants in default of payment of any instalment or performance of any requirement thereof by Purchaser to pay full amount remaining unpaid to General Motors Acceptance Corporation upon

demand. The liability of the undersigned shall not be affected by any indulgence, compromise, settlement, extension of credit, or variation of terms effected by or with the Purchaser or any other person interested. Notice of acceptance of this guarantee, notices of non-payment and non-performance, notices of amount of indebtedness outstanding at any time, protests, demands, and prosecution of collection, foreclosure and possessory remedies, and the right to remove any legal action from the court originally acquiring jurisdiction, are hereby expressly waived.

Witness:

.... (L. S.)
(Guarantor)

.....
(Address)

The purchaser's statement required in connection with the General Motors Acceptance Corporation's form of conditional sale contract is shown in Form 185.

24. Conditional Sale Contract of Independent Finance Company

Following (Form 186) is the conditional sale contract of the Evanston, Illinois, Motor Acceptance Company. It is made out in duplicate, the original on white paper, the duplicate on pink paper.

FORM 186

CONDITIONAL SALE CONTRACT

The undersigned seller hereby agrees to sell, and the undersigned buyer hereby agrees to buy, subject to the terms and conditions hereinafter set forth, the following goods, delivery and acceptance of which is hereby acknowledged by buyer, viz:

described as follows:

Make of Automobile	Model No.	Serial No.	Motor No.	Cylinders	Type of Body

together with extra equipment as follows: .....
For the total price of.....
.....Dollars ..... ($.....)
to be paid as follows:

Cash on or before delivery.....($.....)
Trade in.....($.....)
Total credit.....($.....)
Deferred Balance of.....($.....)

which deferred balance the buyer agrees to pay at the office of EVANSTON MOTOR ACCEPTANCE COMPANY, 1829 Benson Avenue, Evanston, Illinois, (or at such other address as may be last designated in writing by said EVANSTON MOTOR ACCEPTANCE COMPANY), at the times and in the amounts set forth in the schedule of payments on the reverse side of this contract, which schedule of payments is incorporated herein and made a part hereof, together with interest on all of said payments not paid when due at the highest lawful contract rate until paid, and if this contract be placed with an attorney for collection, then, unless the same be in violation of any statute relating to usury or otherwise, an additional sum shall be paid by the buyer as attorney's fees, equal to 15 per cent of the amount at such time due hereunder, or if such amount is in violation of any such statute, then as large an amount, if any, as shall by law be permitted.

(1) The title to said goods shall not pass to the buyer until all amounts provided by this contract to be paid and any judgment therefor have been fully paid in cash and the buyer has fully kept and performed all the terms, conditions and covenants herein provided, and upon the prompt performance by the buyer of all the terms, provisions, covenants and conditions in this contract contained on the part of the buyer to be kept or performed, the seller upon written demand, will execute, acknowledge and deliver to the buyer a statement that the condition in this contract has been performed.

(2) This contract may be assigned by the seller from time to time, and the legal holder of this contract from time to time shall be entitled to all of the rights of the seller hereunder. No waiver or extension of any payment, term, provision, covenant or condition shall be considered as a payment or waiver of any default hereunder, nor be construed as a permanent waiver thereof. No transfer, renewal, extension or assignment of this contract or any interest hereunder, by the seller, voluntarily or involuntarily, or any loss, injury, destruction of or to the goods herein described, shall release the buyer from any obligation hereunder.

(3) In the event the buyer defaults in making any payment at the respective times and in the manner herein specified, or in performing any term, condition or covenant herein provided to be performed by the buyer, or a proceeding in bankruptcy or insolvency be instituted by or against the buyer, or a receiver be appointed for the goods of the buyer, or the buyer makes an assignment for the benefit of creditors, then and in any such event the entire unpaid balance of the purchase price of said goods, and all further and additional amounts secured by this contract, shall, at the election of the seller, become and be immediately due and payable without notice or demand, and the buyer does hereby irrevocably constitute and appoint any attorney of any court of record of the state of the buyer's residence, as set forth in this contract, attorney for the buyer and in the buyer's name from time to time to waive the issuance of process and service thereof, to waive trial by jury, to confess judgment in favor of the seller, seller's successors and assigns, for the amount then due under this contract (whether by lapse of time, by declaration or otherwise), together with costs of such proceedings and a sum as attorneys' fees equal to fifteen (15%) per cent. of the amount then due under this contract, or if such amount of attorneys' fees is in violation of any statute of the state where such action be brought, then as

large an amount, if any, as shall by law be permitted as attorneys' fees, and for said purpose to file in said cause the buyer's cognovit therewith, and to make an agreement in said cognovit or elsewhere, waiving and releasing all errors which may intervene in such proceedings and waiving and releasing all right of appeal and right to a writ of error, and consenting to immediate execution upon said judgment. The buyer hereby confirms all that said attorney may lawfully do by virtue hereof.

(4) No warrants have been made by or on behalf of the seller, unless endorsed hereon in writing and signed by the seller.

(5) The buyer shall keep said goods free from all taxes, liens and encumbrances, and from all charges for keep, repairs, storage, maintenance or accessories and upon the failure of the buyer so to do the seller may, at its election, make any payments which, in its absolute discretion, it may deem necessary or advisable to procure or keep said goods free of all taxes, liens and encumbrances and from all charges for keep, repairs, storage, maintenance or accessories, and the sum or sums so paid by the seller, together with interest thereon at the highest lawful contract rate, shall be and become a part of the sum secured by this contract, and shall immediately, without demand, be due and be repaid by the buyer to the seller. Seller may insure said goods to properly protect buyer and seller for any valuation up to the sale price of said goods, less the depreciation thereof. The proceeds of any insurance, whether paid by reason of loss, injury, returned premiums or otherwise, shall be applied toward the replacement of the goods or the payment of this obligation at the option of the seller.

(6) The buyer will, at the buyer's own expense, keep said goods in first class order, repair and running condition, and will, at the buyer's own expense, replace any worn, broken or defective parts, and will allow the seller and its representatives free access to the goods at all times to inspect the same and to determine the condition thereof, and should the buyer fail to pay for any labor done or for any material or accessories, or worn or broken parts, that may be placed upon said goods, the seller may, at its election make such payment or payments, either before or after claim or lien is filed, and any sum or sums so paid by the seller, together with interest thereon at the highest lawful contract rate, shall be and become a part of the sum secured by the contract and shall immediately, without demand, be due and be repaid by the buyer to the seller.

(7) The buyer assumes all responsibility and all liability arising from the use of said goods, either for negligence or otherwise, by whomsoever driven, and will promptly comply with all requirements and regulations, including the licensing of said goods, and does and will assume all the penalties by any law imposed, including the laws of the state and all subdivisions thereof, in which said goods may be or be operated and will indemnify and save harmless the seller from any and all loss or damage to persons or property caused by said goods or by the use and operation thereof to which the seller might possibly be subjected.

(8) It is expressly understood and agreed that until all payments have been made, as in this contract provided, and all the terms, provisions, covenants and conditions herein contained on the part of the buyer to be kept or performed have been fully complied with and performed by the buyer, the buyer shall have no right, power or authority to sell, transfer, assign, mortgage, encumber or in any other manner whatsoever dispose of said goods, or any part thereof, or any interest therein, and the buyer hereby agrees that the buyer will not (voluntarily or involuntarily) sell, transfer, assign, mortgage, encumber or in any other manner whatsoever dispose of

said goods, or any part thereof, or any interest therein, and will at no time and under no circumstances, part with or surrender the possession of said goods, or any part thereof, and will not suffer or allow any of said goods by any means or under any circumstances to pass out of the buyer's possession; and the buyer will keep said goods when not in use at No..... Street, in the City of.....State of..... unless the buyer shall secure the consent in writing of the seller (or if this contract be assigned by the seller, then of legal holder thereof) to a change in the place of storage or housing of said goods, and the buyer will not remove (or permit to be removed) said goods, or any part thereof from said City and State, and will not cause or permit any of said goods, or any part thereof, to be pledged, attached, used or held for any taxes, debts, claims or obligations of the buyer, and will not voluntarily or involuntarily do, or suffer to be done, any of the acts herein in this paragraph prohibited.

(9) Time is of the essence of this contract. The failure of the buyer to make any payment at the respective times and in the manner in this contract provided, or to perform any term, provision, covenant or condition provided by this contract to be made or performed by the buyer, at the respective times and in the manner in this contract provided, is expressly made a ground for the retaking of the goods or any part thereof, and upon the failure of the buyer at any time or times to make any payment at the respective times and in the manner in this contract provided, or to perform any term, provision, covenant or condition provided by this contract to be made or performed by the buyer at the respective times and in the manner as in this contract provided, or upon the abuse, misuse, or unlawful use of said goods or whenever the seller shall deem the goods insecure, the seller may without demand or notice (demand and notice being hereby waived) take immediate possession of all of said goods, or any part thereof, including any equipment, additions or accessories thereto, and the seller, its agents, attorneys and employes may enter upon the premises of the buyer, or the premises wherever said goods, or any part thereof, may be located, and remove said goods, or any part thereof, and the buyer will afford the seller every possible facility and means of assistance in such retaking, and said goods, or any part thereof, at the option of the seller, may be retained by the seller or resold as provided by law. All notices, including notice of the time and place of sale, are hereby waived by the buyer. The buyer agrees that upon the retaking of the goods, the seller may, at its option, retain all payments as liquidated damages for the non-fulfillment of this contract, for loss in value of the goods and for the use thereof. If said goods be resold the proceeds of the resale shall be applied (1) to the payment of the expenses of such resale, (2) to the payment of the expenses of retaking, keeping and storing the goods (including attorneys' fees), (3) to the satisfaction of the balance due under this contract. Any sum remaining after the satisfaction and payment of such claim shall be paid to the buyer; in case of deficiency the buyer shall pay the same with interest at the highest lawful contract rate. It is expressly stipulated that upon the failure of the buyer to make any payment at the respective times and in the manner in this contract provided, or to perform any term, provision, covenant or condition provided by this contract to be made or performed by the buyer, at the respective times and in the manner as in this contract provided, the seller may, at its election (but shall in no event be obligated so to do) rescind this contract either as to all the goods or as to any part thereof.

(10) Any notice provided by this contract, by any law or otherwise, to

be given to the buyer, may be given by depositing the same in the United States registered mail in an envelope addressed to the buyer at the buyer's business address or residence address as given in this contract and a notice so given and mailed shall for all purposes be conclusively deemed to have been given to and received by the buyer on the day the same was mailed.

(11) The seller shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to stop or prevent the seller from pursuing any further remedy which it may have hereunder, or by virtue of any statute or rule of law and in the event suit be brought for the recovery of the purchase price of the goods the title to the goods shall, nevertheless, remain in the seller until the payments in full of the purchase price and all amounts due under this contract and any judgment therefor, and any repossession or retaking or sale of said goods, or any part thereof, pursuant to the terms hereof, or as provided by law, or the recovery of a judgment for the amount at any time due under this contract, shall not operate to release the buyer until full payment has been made to the seller in cash for all amounts due hereunder, and any judgment recovered therefor. The buyer hereby waives the right to remove any legal action from the court originally acquiring jurisdiction. Any provision of this contract prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this contract. The rights given the seller by this contract shall be in addition to all rights given the seller by virtue of any statute or rule of law.

Executed in duplicate, one of which was delivered to and retained by the buyer (the receipt whereof is hereby acknowledged by the buyer), this..... day of..... 192.....

.....(SEAL)
(Purchaser)

.....(SEAL)
(Purchaser)

.....(SEAL)
(Seller)

By.....
President.

WITNESS.....
WITNESS.....
(Signatures of two witnesses)

DEALER'S RECOMMENDATION AND ASSIGNMENT

To EVANSTON MOTOR ACCEPTANCE COMPANY:

To induce you to purchase the within contract, the undersigned submits an accompanying statement which the undersigned believes to be substantially true, unless otherwise hereinafter stated, and certifies that said contract arose from the sale of the goods described in said contract, and that the amount secured by said contract is not more than .....% of the sale price of said goods, when and where delivered, warranting that the title to said goods was at the time of the sale and is now vested in the undersigned free of all liens and encumbrances and that the undersigned has the right to assign such title.

For value received, the undersigned does hereby sell, assign and transfer to the EVANSTON MOTOR ACCEPTANCE COMPANY his, its or their right, title and interest in and to the within and foregoing contract and the goods covered thereby and authorizes said EVANSTON MOTOR AC-

CEPTANCE COMPANY to do every act and thing necessary to collect and discharge the same.

.....
(Seller's Signature)

.....
(Official Title, if Company)

.....

.....
(Witness to Seller's Signature)

Dated....., 192..

CONDITIONAL SALE CONTRACT

$..... ....., Illinois, ..., 192..

For value received.....promise to pay to the order of .....
(Seller)
..... Dollars ($.....) at Office of Evanston Motor Acceptance Company, 1829 Benson Ave., Evanston, Illinois, in installments as follows, viz:..... Dollars ($.....) on the .....day of....., 192.., and remainder of payments as per schedule hereon, until the entire sum is paid, together with interest thereon at the rate of seven per cent. per annum after maturity until paid.

And the undersigned and each of them hereby authorize irrevocable any attorney of any Court of Record to appear for the undersigned and each or any of them in such Court in term time or vacation or at any time hereafter and confess a judgment without process in favor of the holder hereof for the amount then due hereon, together with costs of suit and 10% attorney's fees and to release and waive all errors that may intervene and consent to immediate execution thereon.

The endorsers and guarantors hereon hereby severally waive presentment for payment, notice of non-payment, protest, and notice of protest and diligence in bringing suit against any party hereto, and consent that time of payment may be extended after maturity from time to time without notice thereof.

This note is given in conformity with the provisions of a conditional sale contract executed by the maker of this note on the date hereof.

MAIL ADDRESS

.....
(Purchaser)

Town .....
(Purchaser)

Schedule of Payments

Months After Date

$..... 1 mo.
$..... 2 mos.
$..... 3 mos.
$..... 4 mos.
$..... 5 mos.
$..... 6 mos.
$..... 7 mos.
$..... 8 mos.
$..... 9 mos.
$.....10 mos.
$.....11 mos.
$.....12 mos.

On the reverse side of the above contract is the form of assignment shown below.

FORM 186*a*

For and in Consideration of _____ Dollars
to me in hand paid by _____, the receipt whereof is hereby acknowledged, I do hereby transfer, assign and set over to the said _____ his heirs, executors, administrators or assigns, all salary or wages and claims for salary or wages due, and to become due me from _____ or from any other person or persons, firm, copartnership, company, corporation, organization or official by whom I am now or may hereafter become employed, at any time or times before the expiration of ___ months from the date hereof.

I do hereby constitute, irrevocably, the said _____, his heirs, executors, administrators or assigns, my attorney, in my name, to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of the claim hereby assigned, and I hereby authorize, empower and direct the said _____ or any one by whom I may be employed as above, to pay the said demand and claim for wages or salary to the said _____ his executors, administrators or assigns, and hereby authorize and empower him or them to receipt for the same in my name.

_____ day of _____, 19____

Without recourse pay to the order of
Evanston Motor Acceptance Co.
Evanston, Illinois

Signed _____
(Dealer)

By _____
(Owner, Office or Firm Member)

Name _____

Address _____

Occupation _____

Bus. Address _____

25. Repossession, Damage to Car

In case the purchaser of an automobile defaults the finance company takes possession of it, delivering it to the dealer who sold it, holding him responsible for prompt payment of the note. It is customary for the finance company to include in its charge the cost of collision insurance for the time the note runs, and in case of damage to the car in a collision the finance company deducts from the face of the note whatever insurance it is able to collect.

26. Adopting Time Payment Plan

Many companies are loath to adopt the time payment plan of making sales but are compelled to do so because of the policy followed by competitors. In adopting the plan a concern may follow either of two policies, viz., (*a*) employ a finance company, or (*b*) increase its working capital, thus enabling it to carry the notes given by its customers. This latter plan may be accomplished in various ways, such as borrowing from banks, using either the company's own notes or discounting the notes of customers, or by issuing short-term bonds, or common or preferred stock. In taking recourse to finance companies all risk is shifted, but the retail price must be increased sufficiently to pay for the charges of such companies.

27. Importance of Automobile Sales Financing

In 1925, $3,900,000,000 was required to finance the wholesale and retail credit on new and used cars, of which amount $1,300,000,000 was in the form of cash loaned to dealers by finance companies and $2,600,000,000 measured consumers' financing on the instalment plan. The financing of used cars required nearly one-half of this amount.[1]

28. The Automobile Finance Company

The functions of the automobile finance company are, mainly, two, viz., to finance the dealer in his purchase of cars wholesale and to finance the consumer in his purchase of cars retail. In case of wholesale financing the finance company advances to the dealer about 90% of the cost of the cars, accepting the dealer's promissory note secured by a direct lien on the cars. Insurance is carried on the cars to protect the finance company against fire, theft, and sometimes conversion. As the cars are sold the dealer pays off the notes, thus clearing the title on the cars. Manufacturers sometimes

[1] See *Automobile Industries*, February 18, 1926.

endorse their dealers' notes. Sometimes they extend the services of their own subsidiary finance company.

In case of retail time sales the dealer negotiates the financing for the purchaser, the cost of financing being added to the price of the car. Usually one-third of the gross amount is paid down and the balance in twelve monthly payments, but these terms sometimes vary.

Automobile finance companies are organized in the usual way, the organizers retaining sufficient common stock to control. The money received from sale of securities forms the funds with which they begin business. The management of such a company must work out instalment financing rate schedules and time payment contracts, as well as other technical details. It may secure insurance against fire and theft from an independent insurance company or it may carry its own insurance risk. As soon as the company commences financing wholesale and retail purchases it uses its money to make payment for the cars, receiving in return promissory notes secured by a chattel mortgage or conditional sales contract. When its own available funds are thus exhausted the finance company arranges a loan at a bank, offering as security the secured notes received from dealers or retail buyers. Another plan is to issue collateral trust notes, the secured notes being assigned to a trustee as collateral. The collateral trust notes are issued to the extent of 75% or 85% of the face amount of the secured notes deposited as collateral.

Concerning the relation of the finance company to the commercial banker, H. E. Wright, in his *Financing of Automobile Installment Sales*, says:[1]

> A finance company is largely dependent on the commercial banker for a good portion of its working capital, and as the banker has many places to invest money, he is in a position where he can be relatively independent. For this reason, it is to the interest of the company to encourage the confidence and lib-

[1] H. E. Wright, *Financing of Automobile Installment Sales* (Chicago, A. W. Shaw Company), pp. 21-22.

erality of the commercial banker, educating him to its needs and problems. The success of automobile financing in the past few years has placed the commercial banker in a receptive mood, and he has become more and more liberal in his loans to finance companies. Commercial bankers, as a class, recognize the high character and good security of the obligations of good finance companies and are glad to loan them money on fixed lines of credit and secured notes. A finance company account is profitable to a commercial banker, because of the liquid character of its financial transactions, and he is therefore interested in securing its patronage. On the other hand, the banker is prone to recognize the evils of installment credit and is determined not to be directly or indirectly responsible for the inflation of any individual credits in connection with automobile sales. His responsibility for public deposits makes his position on this point necessary.

29. Various Plans of Automobile Financing

Under the recourse plan the dealer insures the finance company against loss due to default or conversion on the part of the purchaser.

Under the non-recourse plan the finance company discounts the dealer's notes without any liability on the dealer's part. The finance company in this instance must look to the buyer in case he defaults. Most of the small finance companies are of this type, although some large ones follow this plan.

Under the repurchase agreement plan the dealer signs an agreement to repurchase the repossessed cars for the balance remaining unpaid. If the finance company is unable to repossess the car it bears the loss, if any; whereas if the finance company is able to repossess the car the dealer bears the loss, if any.

Under the General Motors Acceptance Corporation plan the repurchase agreement is coupled with a dealer reserve for losses.

30. Credit Investigation

Any concern which extends credit, especially where the instalment plan is employed, must protect itself by ascertain-

ing as much as possible concerning the credit risk of the persons or concerns to which it extends credit. In case of a non-recourse automobile finance company it assumes the entire risk, hence it should be particularly careful about the risks it assumes.

The risk investigation extends to both dealers and consumers. The experience, character, financial status and general business record of the dealer require investigation. In case of the buyer, character of business, social standing, whether married or unmarried, past record, and other things require consideration.

31. Financing Automobile Dealers

When a dealer is unable to finance a shipment of automobiles he goes to a finance company and establishes the necessary relationships, whereupon the finance company draws a check payable to the bank involved for 80% to 100% of the face of the draft, the dealer supplying any balance required to make the total payment. Thus the finance company secures the bill of lading and has title and possession of the automobiles. The dealer may secure possession in any one of several ways:

1. Execute a trust receipt, agreeing to hold the automobiles in trust for the finance company, with permission to sell same on condition that the proceeds from the sales, to the amount of the trust receipt, be given to the finance company. Under this plan the finance company retains title to the cars and may secure possession at any time, but the plan is not effective as against a bona fide purchaser without notice.

2. Issue a warehouse receipt to the finance company for each car, the cars being taken to a bonded warehouse instead of being placed on the dealer's floor for sale. The dealer secures possession only after paying the note for which the warehouse receipt serves as collateral. By this plan there is no possibility that the dealer may convert the machine to his own use.

3. Adopt the chattel mortgage arrangement, under which the finance company loans the dealer the funds required to pay the draft held by the bank, taking as security a chattel mortgage on the cars.

One objection to the chattel mortgage is that to make it effective against third persons it must be recorded. This involves time and expense, and may be regarded by some dealers as a reflection on their credit.

4. Employ the conditional sales plan, whereby the finance company secures title to the cars, then resells them to its dealer under security of a conditional sales contract which provides that title to the cars does not pass until the wholesale price has been paid. As in case of the trust receipt, the conditional sales plan is not effective against a bona fide purchaser without notice. *Guarantee Securities Corp.* v. *Eastern S. S. Co.*, 241 Mass. 120.

32. Retail Finance Plan for Phonograph Company

Companies selling phonographs are compelled by competitive conditions to sell on the instalment plan. If they do not have enough working capital to carry the instalment notes receivable given by customers until maturity, they may be compelled to discount these notes. In order to do so the concern desiring to discount its notes may be compelled to submit a statement of its financial condition and such other information as the finance company may demand. The contract shown in Form 187, on the opposite page, is such as might be used between retailer and consumer, and that shown in Form 188, on pages 416 to 418, such as might be used between the retailer and the finance company. Both forms are reproduced, by permission, from Fraser's *Problems in Finance*.[1]

[1] Fraser, C. E., *Problems in Finance* (Chicago, A. W. Shaw Company), pp. 211 and 212-214.

FORM 187

RETAILER'S CONTRACT WITH CONSUMER

ERLESS PHONOGRAPH COMPANY
PHONOGRAPHS AND RECORDS

Contract No. .....
Style .....
Selling Price $.....
Amount Paid $.....

Balance Owing .....$.....

City..... State..... Date.....

Received from .....(hereinafter called
Name of dealer
Company) one (1) Erless Phonograph, Serial No..... complete, for which I, the undersigned, agree to pay to said Company or its assigns $..... in hand and $.....per month
Cash payment Monthly payment
as balance of purchase price for.....months on the
No. of months
day of each month and with interest thereon from date at the rate of..... per cent per annum, payable monthly. Title and ownership to remain in above Company or assigns until all of said indebtedness is fully paid, at which time ownership shall pass to me.

If I fail to make any of said monthly payments as above specified, I agree to return the said phonograph to the Company or its assigns on demand, and at the option of you or your assigns all remaining installments may be declared immediately due and payable. I further agree to take good care of said phonograph and to be responsible for its loss by theft, fire, or other casualty and not to remove it from..... unless I
No. street, city, state
first obtain the written consent of said Company or its assigns.

It is understood and agreed that no other agreement or guaranty, verbal or written, express or implied, shall limit or qualify the terms of this contract.

Accepted ....., 192... Signed.....
Customer

By..... Salesman.....
Dealer's salesman sign here

Phonograph serial number must appear on all copies of contract.

Purchaser and salesman must sign all copies in ink or indelible pencil.

This form is not for use in the States of Colorado, Illinois, Louisiana, Michigan, Missouri, Ohio, Pennsylvania, or Texas.

FORM 188

CONTRACT OF ERLESS PHONOGRAPH COMPANY WITH REED FINANCIAL CORPORATION

SCHEDULE OF DEFERRED PAPER SOLD TO REED FINANCIAL CORPORATION

City..... State.....

Date....., 19...

For value received I (we) hereby sell, assign, and deliver to Reed Financial Corporation and its assigns the Deferred Payment "Paper" taken in the disposal of Merchandise manufactured by the Erless Phonograph Company (hereinafter referred to as the manufacturer) to purchasers listed on the reverse side hereof and do warrant and represent that each such document is genuine and that the unmatured installments are unpaid and not subject to any liens, offsets, or counter claims.

I (we) agree until notice from you to the contrary to act as your agent in collecting the respective installments of such "Paper" and not to mingle the same with my (our) funds, but to keep the same separate and to remit to you the aggregate of all monthly installments due from purchasers in each month, as determined by one of the following three paragraphs:

1. If this schedule is dated between the first day and the sixth day (both inclusive) of any month, the remittances shall be sent you on the last day of that month and each succeeding month thereafter.

2. If this schedule is dated between the seventh and the twenty-second day (both inclusive) of any month, the remittances shall be sent you on the fifteenth day of each succeeding month thereafter.

3. If this schedule is dated between the twenty-third day and the last day (both inclusive) of any month the remittances shall be sent you on the last day of each succeeding month thereafter.

If any debtor in such "Paper" anticipates the amount due from

him, I (we) will immediately remit to you the full amount of such payments anticipated, and, if any Merchandise is returned by any debtor, I (we) will immediately report the same to you and repurchase from you the "Paper" covering such Merchandise at the amount of your remaining investment therein.

I (we) guarantee that each installment due on said "Paper" will be paid at or before its maturity, but, if any installments are not paid by the debtors, I (we) agree to remit the same to you for account of the debtors. You and your assigns shall have the right to examine my (our) books and records relating to said "Paper" and the collections thereon at all reasonable times and you or anyone designated by you may place on any of said "Paper" the necessary assignment in our name should we omit to place it thereon. If I (we) fail to collect and (or) remit to you the payments above provided for or upon any like "Paper" delivered to you under similar schedules, I (we) agree, on demand, to repurchase from you all such "Paper" I (we) may have sold to you at the remaining amount of your investment therein and to reimburse you for any expenses or attorney's fees in enforcing your rights under any of said "Paper."

You shall on your acceptance hereof as the purchase price pay that percentage of the unmatured installments of said "Paper" falling with acceptable maturity limits, less your discount as shown on the plan below, and any installments beyond said period shall be reassigned to us when all our agreements under this and any similar schedule shall have been performed. When all installments due thereon shall have been paid to you, provided no provision of this or any like assignment and no other "Paper" you have acquired from me (us) is in default, you shall pay me (us) the remaining percentage of said "Paper" as compensation for our collection service and our guaranties above.

I (we) agree to do all such things as may be required by the terms of any bond which you may cause to be executed to guarantee any of my (our) warranties or promises herein contained, which bond shall be at your expense, and that the breach of any warranty or promise herein contained shall be held to be a breach of the warranties and promises contained in any like assignment executed to you.

Reed Financial Corporation is hereby directed to pay proceeds of this schedule to the manufacturer to whom it is hereby assigned.

..... (Dealer)

By .....
Officer's Title

..... Address

Each monthly remittance must be equal to the total sum of all payments due for the same month on the accompanying "Paper."

Each schedule may cover all like maturities; thus, eight-months' "Paper" may go on one schedule, ten-months' "Paper" on another schedule, and so forth.

Each customer's contract must be endorsed on back by Dealer and if Dealer is Corporation, by proper officer.

At time of acquiring "Paper," Reed Financial Corporation will pay

									Discount
83 1/3 %	of paper	maturing	in	12	equal	monthly	payments,	less	6½%
81 9/11%	"	"	"	11	"	"	"	"	6½%
80%	"	"	"	10	"	"	"	"	5½%
77 7/9 %	"	"	"	9	"	"	"	"	5½%
87 1/2 %	"	"	"	8	"	"	"	"	4½%
85 5/7 %	"	"	"	7	"	"	"	"	4½%
83 1/3 %	"	"	"	6	"	"	"	"	3½%

Balance is paid dealer as specified above.
Dealer retains all interest paid by customer.

33. Finance Company vs. Bank

A company about to make an extensive purchase which may be paid for on the instalment plan or liquidated at once by securing a loan at its bank is confronted with the question, which is the desirable plan to follow? Of course the working capital position of some companies is so favorable that neither plan need be resorted to except under unusual circumstances. It is evident that a company engaged in selling automobiles retail will ordinarily make use of the service of a finance company because of the convenience afforded by this highly developed business. In other lines, however, the advantages are not so obvious. The pros and cons of this problem are adequately discussed by Fraser in *Problems in Finance,* pages 219-220, where he is considering the financing of installations of sprinkler systems. He states that many customers who at first are inclined to regard borrowing through banks or in the open market as preferable to having recourse to a finance company because of the apparent lower interest rate charged, find upon investigation that there are certain adverse factors in this plan, viz., that the primary interest cost is not the only charge, that if the loan is made

at a bank a minimum deposit of 20% of the loan must be carried at the bank thus increasing the charge by 25% to 50%, that the bank may require extensive audits to be made of the company's records, that legal assistance may be needed in connection with the making of the contract. On the other hand, finance companies bear all expenses in connection with the loan, so that it may be found that it does not greatly exceed the cost of procuring a bank loan.

34. Open Market Financing

Notes are sometimes sold on the open market. In such case it may be necessary to have such notes registered by a bank, also to make them payable at a bank. For this service a charge must be paid.

35. The Subsidiary Finance Company

By a subsidiary finance company is meant one controlled by the company which makes the sale. An illustration is the General Motors Acceptance Corporation. No doubt there are some advantages in this close relationship between selling and finance companies. The officers of the finance company understand fully the problems of the parent company and are usually in a position to exercise greater discretion in case of failure of the purchaser to meet his payments promptly than would be the case with the officers of an independent finance company. Likewise, any adjustments necessitated by poor workmanship could be made more readily.

36. Financing Finance Companies

Since finance companies do not usually possess sufficient capital to carry the notes of consumers to maturity, they are compelled to discount them at a bank. Before a bank will undertake the discounting of the notes of a finance company it must be satisfied as to the integrity of its management, of its financial standing, and of the capacity of the officers.

Satisfied as to these points, the bank will arrange to extend a line of credit secured by the instalment notes or contracts of the purchasers, the amount loaned amounting to possibly a maximum of 80% of the face value of the notes hypothecated. The bank may also require the finance company to keep a deposit balance averaging 20% or so of the amount loaned, also that the finance company free itself from debt to the bank for a certain number of days each year. On deposits left with the bank interest may or may not be allowed, probably not. The bank may also reserve the right to examine all notes presented as collateral and to reject any that are unsatisfactory. The bank may also agree to extend the line of credit after having had satisfactory results with the amount first granted. It may insist on proper diversification of customers' notes and require that they do not run beyond a certain period.

37. Relation of Finance Company to Dealer

Finance companies do not lend money on commodities; on the contrary, the financing of instalment paper consists in buying the consumers' obligations from the dealers who sell the commodities. The finance company deals with the dealer, not with the consumer. To establish relationships with a finance company the dealer submits a financial statement, references, etc., in about the same way he would if he were to try to secure a loan at a bank. Hence the dealer's credit is a matter of first importance. After the proper business relationship has been established, usually in form of a binding contract, the finance company gives the dealer a rate chart. The dealer, when he makes a sale, adds the appropriate finance charge as set forth in the rate chart, which usually includes insurance, to the unpaid balance owing on the article sold, and then secures from the buyer a note and a contract (usually in form of a conditional sale) for the total amount.

The dealer now transmits these papers to the finance company for its acceptance, and the latter remits the proceeds

to the dealer, so that the dealer is in effect selling goods for cash. The work done for the dealer by the finance company is thus explained by C. A. H. Narlian writing in the *Journal of Accountancy,* February, 1928, page 86:

(1) Promptly providing funds with which to finance the sales of the dealer up to certain limits, which are naturally based upon the financial strength, etc., of the individual dealer. This obviates the necessity of the dealer constantly having to raise money by means of loans from his bank.

(2) Passing upon the credit of the purchaser both as to his ability and willingness to pay. In this respect the same fundamental banking principles which apply to sound credits are vitally necessary.

(3) After the credit has been passed and the paper purchased, it is incumbent upon the finance company to keep the purchaser notified as to the recurring future payments that are to be made and to effect collection thereof, at the same time using every endeavor to maintain the goodwill of the purchaser throughout the period of their dealings with each other, to the end that he may again be ready to do business with the dealer at a later date.

38. Three Plans of Instalment Financing

A finance company may proceed to finance dealers on one of three possible plans, viz:

1. Without recourse
2. Endorsement by dealer
3. Repurchase agreement

1. Under the plan of financing without recourse the dealer is relieved of all liability on the transaction, except as to the validity of the paper. The dealer has no contingent liability on such paper. The contract required by the Evanston Motor Acceptance Company, Form 186, is of this character.

2. If the dealer endorses the paper he becomes fully liable for the unpaid balance. See General Motors Acceptance Corporation's requirements shown in Form 184. In this case the dealer has a contingent liability which should be shown

on his balance sheet, preferably by showing it as a liability item under Notes Receivable Discounted. Sometimes when this plan is followed a guaranty by some person or persons of financial responsibility is required. See General Motors Acceptance Corporation's form of guaranty, page 402.

3. Under the repurchase agreement plan the dealer agrees that in case of repossession of the article by the finance company he will accept delivery of same. Usually, in case of damage to the car through collision the agreement provides that the finance company shall make allowance to the dealer for the damage. Whether it is necessary for the dealer to show a contingent liability on his balance sheet has been questioned. See *Journal of Accountancy*, February, 1928, page 87, and March, 1928, pages 197-200. The weight of accounting opinion is in favor of showing the contingent liability arising out of such repurchase agreements.

In connection with the above reference to contingent liabilities may be noted the provisions contained in "Approved Methods for the Preparation of Balance Sheet Statements," published in the *Federal Reserve Bulletin*, April, 1917:

> It is not enough that a balance sheet shows what must be paid; it should set forth with as much particularity as possible what may have to be paid. It is the duty of an auditor who makes a balance sheet audit to discover and report upon liabilities of every description, not only liquidated debts but possible debts. The following are the usual forms under which contingent liabilities will be found:
>
> Indorsements
>
> Guaranties
>
> Unfilled contracts
>
> When notes receivable are discounted by banks the company has a liability therefor which should appear on the balance sheet. Lists of discounted notes not matured at the date of the audit should be obtained from the banks as verification and their totals entered under 20a, if the cash therefor is shown as an asset.
>
> Inquiry must be made as to whether any of the accounts receivable have been hypothecated or assigned and the sum total of accounts so listed entered under 20b.

The references to 20a and 20b refer to sub-classifications on the liability side of the balance sheet contained in the *Federal Reserve Bulletin.* These are as follows:

20a—Notes receivable discounted or sold with indorsement or guaranty (contra).

20b—Customers' accounts discounted or assigned (contra).

In case the management does not care to show such contingent liabilities on the face of the balance sheet a footnote appended to the balance sheet should be used to explain it.

The custom of securing the dealer's endorsement is not as popular as formerly, having been replaced to a large extent by the non-recourse plan or by the repurchase agreement plan.

39. Rules to be Followed

If the article sold depreciates rapidly, as is the case with many articles sold on the instalment plan, it is necessary that certain rules be followed to accomplish sound financing of such sales and to protect not only the working capital position of finance company and dealer but to guarantee them against insolvency as well. The down payment must be adequate to protect the finance company in case repossession becomes necessary and it should be enough to provide an incentive for the purchaser to continue his payments. The payments should not extend over too long a period of time. The unpaid balance should be reduced more rapidly than the article depreciates. Before a sale is made on the instalment plan the dealer should ascertain that the purchaser may be expected to be able to pay up. The character of the buyer should be such as to serve as a guarantee of payment. In case of used automobiles, excessive prices should not be charged. The article sold should be insured for an amount and for a period of time necessary to protect the finance company. Finance companies which operate on a national scale are less likely to be injured by local depressions than are those which operate over restricted areas. The stock in

trade of finance companies consists of notes receivable, these being the principal asset on their balance sheets. Hence the need of applying rules essential to the maintenance of a sound portfolio of such notes.

40. Finance Company Accounting

Most of the detailed accounting of finance companies concerns the record of the purchase whose note the company has accepted. According to C. A. H. Narlian, the account with each individual, in case of automobile finance companies, is usually kept on a card containing such information as the following:

1. File number
2. Purchaser's name and address
3. Dealer's name and address
4. Date of contract
5. Total selling price of car
6. Amount of the note
7. Number of monthly instalments
8. Amount of each instalment
9. Day of month upon which instalment is payable
10. The plan under which it is sold
11. The make of car
12. Serial number
13. Motor number
14. Year and model
15. Accounting control in which it is contained
16. Grade of credit risk
17. Insurance certificate issued thereon
18. Amount of insurance
19. Service and finance charges
20. Reserve withheld from dealer

Automobile finance companies, to protect themselves against duplicate financing of the same car, maintain an association which checks over each contract.

Among matters requiring special attention in finance company accounting are deferred income and the making of adequate allowance for credit losses. The income of a finance company, like that of a concern selling on the instalment

plan, must be deferred on some suitable plan so that each period will show its due amount of income. The plan which appears to be supported by most conservative authorities is to spread the income over the life of the paper held. It also appears proper to deduct from the amount representing the excess of the face of the notes over what is paid for them certain costs, viz., (*a*) insurance premiums, reserves for credit losses, and costs of acquiring the paper. The spreading of the balance as deferred income may then be made, each month's proportionate share thereof being taken up as realized income.

To meet losses in the form of uncollectible notes receivable adequate reserves must be set up out of gross income. What is adequate only experience will show.

It is particularly important that the notes receivable record be kept up to date. This record should show, (*a*) the face value of the note, (*b*) the amount due the dealer, (*c*) the discount and service charges, (*d*) the insurance, (*e*) the insurance commissions, and (*f*) any other information essential to an understanding of the worth of the paper. Postings should be made therefrom to a general ledger monthly. Collections are usually posted on bookkeeping machines, the postings sometimes being made simultaneously to bookkeeping and collection cards.

Controlling accounts should be kept in the general ledger for the various kinds of notes purchased, as, retail, wholesale, etc., and these may in turn be divided into groups, as recourse and non-recourse, interest bearing and non-interest bearing, etc.

If a finance company borrows at a bank using notes receivable as collateral an item of notes payable arises. The notes thus given as collateral are signed by an officer of the investment company and certified by the trustee.

An excerpt from a standard form of trust deed is here reproduced:

> The trustee shall not certify and deliver any notes hereunder, unless at the time of such certification and delivery the trust

property subject to this indenture should consist of, or include, unmatured purchase money obligations for the payment of principal amounting in the aggregate to 110% of the aggregate principal amount of all the notes outstanding (including those of the time so to be certified and delivered) and remaining after deducting from the aggregate principal amount of all notes the amount of any moneys then included in the trust property.[1]

This means that to borrow $100 security equal to $110 must be deposited with the trustee. Sometimes the amount of collateral required is greater in proportion to the amount loaned.[2]

41. Services of Factors

A factor is a person or firm which buys and sells on a commission. Frequently a factor agrees to advance funds on goods consigned to him for sale, thus helping to finance the manufacturer or producer. Sometimes the factor guarantees the accounts of those to whom he sells, and he may also agree to bill and collect. An illustration of an industry which has always marketed its products through commission merchants is the New England cotton and woolen industry.

These merchants were frequently importers and becoming thus acquainted with the styles, took over the work of preparing the styles for the mills. They became part owners in the mills, endorsed the mill paper at banks, and developed the well-known dry goods commission house. Instead of endorsing mill paper, some made cash advances on consignment. Some guaranteed customers' accounts, discounting the sales. Some limited their assistance to the mills to giving credit advice and thus they assumed no responsibility for accounts beyond that of undertaking the work of collection.

---

[1] *Journal of Accountancy*, July, 1927, page 28.

[2] For a detailed discussion of deferred income as applied to finance companies, also of monthly and cumulative spread, see article by R. C. Brown, *Journal of Accountancy*, July, 1927, pp. 29-35.

In recent years there has evolved from the commission house a textile banker, which first took the form of a commission house "annex." The textile banker maintains no selling force or show rooms, its duty being to supply financial services of the commission house to mills and agents. This service differs under different circumstances. Usually it consists in a guaranty of credit and the discounting of customers' notes. To accomplish this safely the factor maintains a credit office which passes on the credit of customers before orders are sent to the mills. Thus the factor fixes the lines of credit in advance, a function somewhat rare among credit men. Next, the factor makes cash advances on the mill's merchandise when it is consigned to the factor, the factor taking a prior lien thereon. The advances are made up to an agreed upon percentage of the value of the goods. Liens on personal property being legal only when the lender has possession, the mill either ships the goods to the factor or his warehouse, or to a finisher in the name of the factor, or to some other place where the factor's possession of the goods may be established.

So popular has this method of financing textile manufacture become that it has been estimated that 80% of the total is being thus financed. The factor can perform these services more cheaply than the manufacturer can undertake them himself. The factor secures a far wider distribution of credit risk than could the mill and his experience makes him a specialist in the field.

The factor secures the repayment of money loaned to the mill when he sells the goods. He charges the mill 6% interest, which is a helpful rate, especially in times of tight money.[1]

A not unusual agreement would be for the factor to advance money up to two-thirds the value of the goods consigned, and a reasonable rate of commission might be 2½% on sales for factoring services and 6% for selling

[1] *New York Journal of Commerce*, October 2, 1922. Also *Bulletin of Robert Morris Associates*, January, 1925.

services. (See Fraser, C. E.: *Problems in Finance,* page 226.) Naturally these percentages will vary according to circumstances.

FORM 189

PROMISSORY NOTE

(Date).....19...

$.....

.....days after date the.....Company promises to pay to the order of.....the sum of.....dollars, with interest at the rate of.....% per annum from date hereof until paid, for value received.

Payable at the.....Bank of.....

The.....Company

By.....

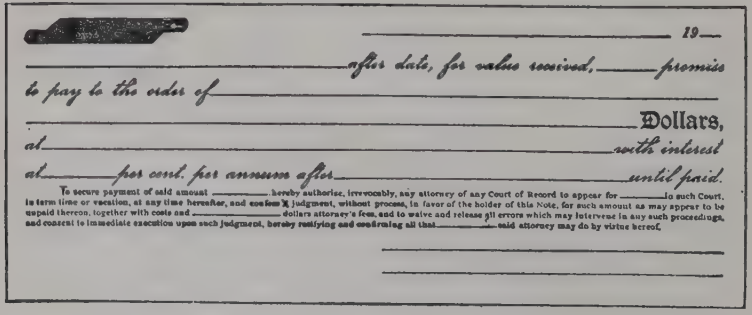
.....

(title of officer)

Note: If a note is to be made payable on demand, the words "on demand" should be used to begin the body of the note.

FORM 190

PROMISSORY NOTE WITH CONFESSION OF JUDGMENT



_____ 19—

_____ after date, for value received, _____ promise to pay to the order of _____

_____ Dollars, at _____ with interest at _____ per cent. per annum after _____ until paid.

To secure payment of said amount _____ hereby authorize, irrevocably, any attorney of any Court of Record to appear for _____ in such Court, in term time or vacation, at any time hereafter, and confess X judgment, without process, in favor of the holder of this Note, for such amount as may appear to be unpaid thereon, together with costs and _____ dollars attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that _____ said attorney may do by virtue hereof.

_____

_____

FORM 191

NOTE PAYABLE TO CORPORATION

(Date).....19...

$.....

For value received.....after date I promise to pay to the order of.....Company the sum of.....dollars with interest from date hereof until paid at the rate of 6% per annum. Payable at the.....Bank of.....

.....

FORM 192

DRAFT

(Date).....19...

$.....

At sight (or.....days after date) pay to the order of .....the sum of.....dollars.

The.....Company

By.....

(President)

To.....

.....

FORM 193

ENDORSEMENT IN BLANK

The.....Company

By.....

(Signature of properly authorized officer)

FORM 194

RESTRICTIVE ENDORSEMENT

Pay to the order of.....

The.....Company

By.....

(Signature of properly authorized officer)

FORM 195

ENDORSEMENT WITHOUT RECOURSE

Pay to the order of.....
Without Recourse

The.....Company

By.....
(Signature of properly authorized officer)

FORM 196

ENDORSEMENT FOR COLLECTION

Pay to the.....Bank for Collection

The.....Company

By.....
(Signature of properly authorized officer)

FORM 197

ENDORSEMENT WAIVING PROTEST

Waiving Protest

The.....Company

By.....
(Signature of properly authorized officer)

FORM 198

RESTRICTIVE ENDORSEMENT

Pay to.....Only

The.....Company

By.....
(Signature of properly authorized officer)

Form 199

Collateral Note with Power of Attorney

$\$$_____ _____ 19 __

_____ after date, for

Value Received, _____ Promise to Pay

to the Order of _____

the sum of _____ DOLLARS,

at _____ with interest at the rate of _____ per cent per annum after _____ having deposited with said _____ as collateral security, _____ which _____ hereby give the said _____ agent or assignee, authority to sell, or any part thereof, on the maturity of this Note, or at any time thereafter, or before, in the event of said securities depreciating in value, in the opinion of said _____ at public or private sale, at the discretion of said _____ or _____ assignee, without advertising the same, or demanding payment, or giving _____ any notice and to apply so much of the proceeds thereof to the payment of this Note as may be necessary to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of the said _____ including attorney's fees; and, in case the proceeds of the sale of the said _____ shall not cover the principal, interest, and expenses, _____ promise to pay the deficiency forthwith, after such sale.

_____

DUE _____ _____

Know all Men by these Presents, THAT _____, the Subscriber ___, _____ justly indebted to _____ upon the above written Promissory Note, bearing even date herewith, for the sum of _____ Dollars, with interest at the rate of _____ per cent per annum after _____ and due _____ after date _____

Now, therefore, in Consideration of the Premises, _____ do _____ hereby make, constitute, and appoint _____ or any Attorney of any Court of Record, to be _____ true and lawful Attorney, irrevocably, for _____, and in _____ name ___, place, and stead, to appear in any Court of Record, in term time or in vacation, in any of the States or Territories of the United States, or elsewhere, at any time after said Note becomes due, to waive the service of process, and confess a judgment in favor of the said _____ or _____ assigns or assignees, upon the said Note, for the amount thereof, and interest thereon to the day of the entry of the said judgment, together with costs, and _____ dollars, Attorney's fees; and also to file a cognovit for the amount thereof, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere, in any manner, with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment, or issuing the execution thereon; and, also, to waive all benefit or advantage to which _____ may be entitled by virtue of any Homestead or other Exemption Law, now or thereafter in force, in this or any State or Territory, where judgment may be entered by virtue hereof; hereby ratifying and confirming all that _____ said Attorney may do by virtue hereof.

Witness, _____ hand ___ and seal ___, this _____ day of _____

A. D. 19 ____

IN PRESENCE OF

_____ _____ Seal

_____ _____ Seal

_____ _____ Seal

Form 200

Application for Loan

_____ 19____

To_____

You are hereby authorized to negotiate for me a loan of $_____,
payable in_____ years, to bear interest at_____ per cent., payable semi-annually, evidenced by principal and interest notes (judgment form if desired), payable at your office, or place appointed by lender, and secured by a first mortgage or trust deed (of your or the lender's usual form), on the following real estate:

_____

_____

_____

known as No._____ street _____ x _____ fronting_____ between

_____ and_____ Improvements are:

_____

Number of rooms_____ Occupied as_____

Heated by_____

Size of building_____

_____

Built in 1 _____, Rental value? $_____

Street paved?_____ Water?_____ Sewer?_____ Gas?_____

Cash Value of land? . . . . . $_____

Cash value of improvements? . . . . . $_____

Total cash value, . . . $_____

Mortgage or liens now on property?_____

Record title of premises is in_____

Name of wife, or husband_____

I agree to furnish a complete satisfactory abstract, or title guaranty policy (at your option), covering and showing said loan to be a first record lien, and authorize you to keep said improvements insured during the loan, for not less than $_____ with loss payable to trustee or mortgagee. Abstracts, guaranty and insurance policies to be held as collateral to said loan, or kept by you until loan is paid.

Applicant's business?_____

References?_____

_____

In consideration of my application of this date to_____ for the negotiation of a loan of $_____, I agree to pay all expenses or advances made or incurred for abstracts, guaranty policy, recording, insurance, taxes or otherwise thereunder, and to pay them as commission _____ per cent. on said amount, and $_____ as attorney's fees for examination of abstracts, all which amounts may be deducted from any loan obtained, if not previously paid by me.

Dated. _____. _____

Form 201

Application for Loan (Short Term)

_____ 19____

To_____:

You are hereby authorized to negotiate a loan of_____ Dollars for_____ years from date with semi-annual interest at the rate of_____ per cent. per annum, to be secured by first trust deed, form to suit lender, on the following described real estate:

Street Number_____ front between_____ and_____ Lot_____ x_____ with_____ (_____ x_____) built_____ years ago.

Value of Ground, $_____ Value of Building, $_____ Total Value, $_____

Rental Value, $_____ per month.

I agree to furnish a complete merchantable abstract of title or guaranty policy (at your option) showing such trust deed to be a first lien on said premises_____ and to pay $_____ as commission for negotiating loan, and to pay all expenses of such loan including recording and a reasonable attorney's fee.

I agree to allow you to place all insurance on the herein described premises during the continuance of the loan herein applied for.

Mortgages at present on the premises_____ to be paid.

Remarks:_____.

Wife's name is:_____ Signature:_____

Husband's name is:_____ Address:_____

Occupation:_____

Form 202

Coupon Note

_____ 19____

Due to the Order of_____ Dollars,

*on the*_____ *day of*_____ *A. D. 19* ____ *without grace, at*_____

*with interest at the rate of*_____ *per cent. per annum, after maturity, being for an instalment of interest due on that day upon*_____ *principal Promissory Note, of even date herewith, payable to the order of*_____ *years after its date, for the sum of*_____ *DOLLARS, secured by*_____ *upon Real Estate in*_____

Note: This form should be repeated as many times as there are instalments of interest.

Form 203
Agreement to Renew Loan

WHEREAS, On ____ day of ____ A. D. 1 ___, ____ a loan of the sum of ____ Dollars was made to ____ of ____ County ____ evidenced by the ____ principal promissory note of the said ____ dated ____ A. D. 1 ___ for ____ Dollars, payable to ____ order ____ years after its ____ date, with interest at the rate of ____ per cent per annum, payable ____ annually, and both principal and interest payable at the ____ the payment of which said note ___ and interest was secured by a Trust Deed of even date therewith, executed by said ____ conveying to ____ as Trustee, certain Real Estate in ____ which said Trust Deed was recorded in the Recorder's Office of ____ County, ____ on the ____ day of ____ A. D. 1 ___, in Book ____, of ____ at page ____

And Whereas, The said ____ principal note ___ ha ___ become due and ____ now owned and held by ____ and ____ ha ___ requested of said ____ an extension of the time of payment thereof;

Now, these Presents, Dated this ____ day of ____ A. D. 19___ made between the said ____ and the said ____ witness; That in consideration of the mutual promises and agreements hereinafter made by and between the parties hereto aforesaid, the said parties do hereby mutually promise and agree as follows, to-wit: the said ____ agrees with the said ____ that the time of payment of said principal note ___ be, and the same is hereby extended, for a period of ____ years from the ____ day of ____ A. D. 19___, to-wit: until the ____ day of ____ A. D. 19___, and the said ____ agrees with the said ____ that ____ will pay to said ____ the said principal sum of ____ Dollars, in said principal note ___ mentioned, on the ____ day of ____ A. D. 19___, with interest thereon from the ____ day of ____ A. D. 19___, until paid, at the rate of ____ per cent per annum, payable ____ annually, on the ____ day of ____, and of ____ in each year, and both principal and interest payable at the ____

And said parties hereto further mutually agree, that all of the provisions, stipulations, powers and covenants in the said principal note ___ and in the said Trust Deed contained, shall stand and remain unchanged and in full force and effect for and during said extended period (including the right of election to the holder of said principal note ___ to make the principal due on thirty days' default in payment of interest), except in the items of the rate and place of payment of interest, and the time and place of payment of principal, which have been changed as aforesaid.

The interest for said extended period is further evidenced by ____ interest notes, made by said ____ of even date herewith, for ____ Dollars each.

The agreements herein contained shall bind and inure to the respective heirs, executors, administrators and assigns of the said parties hereto.

In Witness Whereof, The said ____ and the said ____ have hereunto set their hands in duplicate.

____

____

Form 204
Agreement to Extend Loan

Memorandum of Agreement, Made and entered into this _____ day of _____ 19 , between _____ of the County of _____ and State of _____ party of the first part, and _____ of the County of _____ and State of _____ party of the second part;

Witnesseth, Whereas said party of the first part is the legal owner and holder of the certain promissory note made by _____ dated _____ 19 , in the sum of _____ Dollars, payable _____ years after said date, to the order of _____ and by _____ endorsed and delivered, which note _____ secured by a deed of trust from _____ to _____ Trustee, conveying the premises situated in the County of _____ and State of _____, described as follows, to-wit:

which deed is recorded in the Recorder's Office of _____ County, in the State of _____, in Book _____ of Records, on page _____ as Document number _____ and

And Whereas, Said second party desires to have the payment of _____ Dollars of said note of _____ Dollars extended for _____ year from _____ 19 , in consideration of the agreement hereinafter made on _____ part;

Now, Therefore, Said party of the first part agrees to extend the payment of _____ Dollars of said note of _____ Dollars for _____ year from _____ 19 that is to say until _____ 19 so long as the said party of the second part shall promptly pay interest thereon from _____ 19 , at the rate of _____ per cent. per annum, payable semi-annually at the place in said note mentioned, and shall further keep and perform all and singular the covenants and agreements in said note and trust deed contained.

And the said party of the second part hereby agrees to and accepts said extension upon the conditions aforesaid, and has executed _____ interest notes or coupons of _____ Dollars each, evidencing and securing the interest on said note for the time of such extension, and agrees that in case of default in the payment of any one of said interest payments, and in case of a failure to keep and perform any one of the covenants and agreements in said note and trust deed contained, this agreement shall at once become null and void at the option of said party of the first part, and said note of _____ Dollars shall at once become due and payable, and may be collected without notice, together with the accrued interest thereon, at the rate of _____ per cent. per annum, anything herembefore contained to the contrary notwithstanding.

It is Further Agreed, That this agreement shall be binding upon and inure to the heirs, executors, administrators and assigns of both parties hereto.

Witness The hands and seals of the parties hereto the day and year first above written.

_____ Seal
_____ Seal
_____ Seal

Form 205

Instalment Note

$_____ _____ 19 __

At the dates hereinafter mentioned, for value received, I or we jointly and severally promise to pay to the order of _____ at his office in _____ or at such other place as the legal holder hereof may in writing appoint, the sum of _____ DOLLARS in the following instalments, and agree that on default in the payment of any instalment the whole amount of this note shall then and there become due at the election of the legal holder hereof:

$____ on ____ 19	$____ on ____ 19	$____ on ____ 19
$____ on ____ 19	$____ on ____ 19	$____ on ____ 19
$____ on ____ 19	$____ on ____ 19	$____ on ____ 19
$____ on ____ 19	$____ on ____ 19	$____ on ____ 19

With interest at seven per cent. per annum after maturity. If this note is not paid when due, I or we agree to pay an attorney's fee of Twenty-Five Dollars if placed in the hands of an Attorney for collection. We and each of us jointly and severally, do hereby waive presentment for payment, notice of dishonor, and protest this note, and hereby consent to the extension of this note from time to time without notice to us, and hereby waive any and all notice of whatsoever kind or nature and waive the exhaustion of all legal remedies hereon.

In Consideration Whereof, and to secure the payment of said amount, I or we hereby authorize, irrevocably, any attorney of any court of record, to appear in such court, in term time or vacation, at any time hereafter, and confess a judgment without process in favor of the holder of this note for such amount as may appear to be unpaid thereon, together with costs and an attorney's fee of 10 per cent. of such amount but not less than $10.00; to consent to immediate issue of execution, to waive and release all errors and irregularities that may occur in entering up judgment hereon, and further to agree that no appeal or writ of error shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment or execution issued thereon.

And further to secure the payment of the said amount the undersigned hereby sells, transfers, assigns, and sets over unto said _____ his successors and assigns, all salary, wages, commissions, and all compensation of every kind and nature, and all claims therefor, both earned at the date hereof and to be earned during a period of _____ years thereafter, and all claims and demands due or to become due the undersigned from _____ the person, firm, or corporation by whom the undersigned is employed at the date hereof, or from the heirs, executors, administrators, successors, or assigns of such present employer, or from any other person, firm, corporation, organization, or official by whom the undersigned may hereafter be employed, or who may owe the undersigned money for any consideration or upon any demand whatsoever, both at the date hereof and for a period of _____ years thereafter, and the undersigned hereby authorizes and directs the person or persons, named above, or any of them, to pay the said demand and claim and all thereof to said _____ his successors and assigns.

_____

_____

_____

Form 206

Instalment Note (Another Form)

Note No. ____ Date, ____ 19 __
Name ____ Pd. $____ Comm. $____ Dis. $____
Amt. $____ Note Extended

$_____ _____ 19 __

At the dates hereinafter mentioned for value received _____ promise to pay to _____ or order, _____ Dollars, in the following instalments, to wit:

$____ on ____ 19 __	$____ on ____ 19 __	$____ on ____ 19 __
$____ on ____ 19 __	$____ on ____ 19 __	$____ on ____ 19 __
$____ on ____ 19 __	$____ on ____ 19 __	$____ on ____ 19 __
$____ on ____ 19 __	$____ on ____ 19 __	$____ on ____ 19 __

With interest at seven per cent. per annum after maturity. On default of any of the above payments the whole amount of this note shall then and there become due, at the option of the legal holder thereof.
If this note is not paid when due, we agree to pay an attorney's fee of Ten Dollars if placed in the hands of an Attorney for collection.

No. ____ Due ____

_____ _____

_____ _____

_____ _____

FORM 207

NOTARY'S CERTIFICATE OF PROTEST

State of .....
.....COUNTY, } ss

Be it Known, THAT on this .....

day of ..... 19.....

I, ...a Notary Public, duly commissioned and sworn, and residing in the.....in said County and State, at the request of .....

.....

went with the original .....which is above attached, to the Office of .....

and demanded.....thereon, which was refused .....

.....

Whereupon I, said Notary, at the request aforesaid, did **PROTEST**, and, by these Presents, do **Solemnly Protest**, as well against the.....of said.....the endorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange and all costs, charges, damages and interest already incurred by reason of the non-.....of the said.....

.....

And I, the said Notary, do hereby certify, that, on the same day and year above written, due notice of the foregoing Protest was put in the Post-Office at.....as follows:

Notice for.....

" " .....

" " .....

" " .....

" " .....

Each of the above-named places being the reputed place of residence of the person to whom this notice was directed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year first above written.

.....
Notary Public.

FEES—Noting for Protest, . . . 25 cents; Protest, ... 75 cents; Noting Protest, ... 25 cents; Notice, ...;
Certificate and Seal, . . . 25 cents; Postage, ... ; Vol..... ; Page..... ; §.....

Form 208

Collateral Note with Power to Sell (Another Form)

_____ 19__

_____ after date,

for value received _____ promise to pay to

_____

or order, _____ Dollars,

at _____ with interest

_____ at the rate of _____ per centum per annum.

_____

_____

_____

Know all Men by these Presents, That the subscriber ____ hereto _____

justly indebted to _____

or order, upon the foregoing Promissory Note, bearing even date herewith, for the sum of _____

_____ Dollars,

and due _____ after date, with interest _____ at the rate of _____ per centum per annum.

Now, Therefore, in consideration of the premises, _____ do hereby make, constitute and appoint

_____ or

any Attorney of any Court of Record, to be _____ true and lawful Attorney, irrevocably, for _____ and in _____ name, place, and stead, to enter _____ appearance, in any Court of Record in the United States of America, or any Territory thereof, or District therein, or elsewhere, at any time after the maturity of said note, to waive the service of process, and confess a judgment against _____ in favor of the said _____

or _____ assigns, upon the said Note, for the above sum, legal damages, and interest on the same, or for so much as may appear to be due, according to the tenor and effect of said Note, and interest thereon after said Note becomes due as aforesaid, at the rate aforesaid, to the day of entry of said judgment, together with legal damages and costs thereon, and also, Attorney's fees at the rate of _____ per cent. upon the amount of principal and interest due upon said Note at the time of entering said judgment; and also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up said judgment, or issuing any execution thereon; and also to waive all benefit or advantage to which _____ may be entitled by virtue of any homestead or other exemption law, now or hereafter in force, in this or any State, Territory, or District, or elsewhere, where judgment may be entered by virtue hereof. Hereby ratifying and confirming all that _____ said Attorney may do by virtue hereof.

Witness _____ hand __ and seal the _____ day of _____ 19

_____ Seal

_____ Seal

_____ Seal

FORM 208 *(Continued)*

Know all Men by these Presents, That the subscriber ... hereto ... justly indebted to ... or order, upon the within promissory note, and ha... this day deposited with said ... as security to the payment thereof, the following mentioned collaterals, namely:

...

...

...

...

...

...

And in default of payment of said note, or any part thereof, at maturity, ... do hereby authorize said ... or ... assigns, to sell and dispose of said security, or any part thereof, at public or private sale, in ... or their discretion; and in the event of said security, or any part thereof, depreciating in market value, do hereby authorize said ... or ... assigns, at ... or their option, to sell and dispose of said security, or any part thereof, at any time before or after the maturity of said note, at either public or private sale. And in the event of sale before or after the maturity of said note as aforesaid, no notice of such sale shall be required to be given to the undersigned, or to any other person or persons whomsoever, either by advertisement or otherwise. And the proceeds of such sale or sales so made as aforesaid, shall, after the payment of all expenses and commissions attending said sale or sales, be applied on said note, and the balance, if any, after payment of said note with interest, shall be returned to the undersigned, ... heirs, executors, administrators or assigns. And at any sale of said collaterals, or any part thereof, made by virtue hereof, it shall be optional with the legal owner or holder of said promissory note, to bid for and purchase said collaterals or any part thereof.

Witness ... hand ... and seal ... at ... in the State of ... this ... day of ... 19

... (Seal)

... (Seal)

... (Seal)

Form 209

Short Form of Collateral Note

$\$$_____ _____ 19 __

_____ after date, for

Value Received, _____ Promise to Pay

to the Order of _____

the sum of _____ DOLLARS,

at _____ with interest at the rate

of _____ per cent per annum after _____ having deposited

with said _____ as collateral security,

_____

_____

_____

_____

_____

_____

_____ which _____ hereby give the said

_____ agent or assignee, authority to sell, or any part thereof, on the maturity of this Note, or at any time thereafter, or before, in the event of said securities depreciating in value, in the opinion of said _____ at public or private sale, at the discretion of said _____ or _____ assignee, without advertising the same, or demanding payment, or giving _____ any notice and to apply so much of the proceeds thereof to the payment of this Note as may be necessary to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of the said _____ including attorney's fees; and, in case the proceeds of the sale of the said _____ shall not cover the principal, interest, and expenses, _____ promise to pay the deficiency forthwith, after such sale.

_____

DUE _____ _____

Form 210

Collateral Note with Power to Sell

$\$$..... CHICAGO, ILL..... 19....

.....after date.....promise to pay to the order of

.....

at the.....

.....DOLLARS,

for value received, with interest at the rate of 7 per cent per annum, after maturity.

.....

.....have transferred and delivered to.....

as Collateral security, for the payment of this and of any other liabilities of the undersigned to said payee, due or to become due, or that may hereafter be contracted, the following property, value of which is.....

.....Dollars viz:

And the undersigned hereby give the said payee and assigns authority to sell the said property, or any part thereof, or any substitutes therefor, and all additions thereto, on the maturity of the above note, or any time thereafter, or before, in the event of the said security depreciating in value, at any public or private sale, without advertising the same, or demanding payment or giving notice, with the right to said payee and assigns themselves to be the purchasers, when sale is made at any brokers' board or public sale. And after deducting all costs and expenses, to apply the residue to the payment of any, either or all liabilities as aforesaid, as said payee or assigns shall elect, returning the overplus to the undersigned; and in case the proceeds of the sale of said property shall not cover the principal, interest and expenses, the undersigned engages to pay the deficiency forthwith after such sale, with legal interest.

.....

XIII

PERMANENT CAPITAL FINANCING

Capital Stock

1. Function of Capital Stock

Capital stock is synonymous with ownership, and a person who owns all of the capital stock of a corporation is its sole owner. Capital stock should not be confused with the certificates of capital stock. Certificates are merely the evidence of ownership of stock. They may be destroyed without in any way affecting the value of the stock. Capital stock is divided into shares or units of ownership, and a certificate may represent one or more such shares. In states which have adopted the Uniform Stock Transfer Law stock certificates are negotiable instruments.

By dividing capital stock into shares having a value which is relatively small compared to the total amount of such capital stock a wide diversification of ownership may be secured. For example, the Red Douglas Pocahontas Coal Company, incorporated under the laws of Illinois, has a capital stock of 20,000 shares of common stock without par value and 200,000 shares of preferred stock, each share of which has a par value of $100. This means that the units of ownership in this company are small, so small in fact that a man possessing but a small sum of money could purchase an interest in the enterprise were the shares offered for sale to the public.

The amount of the authorized capital stock is stated in the charter. By authorized stock is meant the total number of shares which, by grant from the state expressed in the charter, the corporation may issue. The authorized capital

stock of the Red Douglas Pocahontas Company is stated above. A company may issue as many shares as are authorized for such sums as it is able to obtain in exchange therefor, subject to such limitations as exist in the statutes, charter, and common law. The stock thus sold is said to be issued and outstanding.

From the point of view of creditors of a corporation the capital stock performs a peculiar function. They are entitled to look upon the outstanding capital stock as a fund for their protection, and this has given rise to the so-called trust fund theory regarding capital stock. According to this theory the sum paid in by the stockholders for their stock, as well as any unpaid balances on their subscriptions to such stock, is regarded as a fund held in trust for the liquidation of the company's debts, in case it is unable to pay such debts in the usual manner out of available cash. That this theory is a rule of procedure rather than an absolute principle is evidenced by the fact that the statutes of some states permit a reduction of the capital stock within prescribed limits.

Somewhat analogous to stock issued and outstanding is the expression "stated capital." It is usually a sum below which capital or proprietorship may not be reduced without the incurrence of personal liability for debts on the part of those authorizing the reduction. Provisions are found in the statutes of most states to the effect that the capital or capital stock of corporations shall not be impaired by payment of dividends out of anything except surplus. Such statutes will be found to vary widely as to their details and some may not be suitably worded for the accomplishment of the purpose for which they are intended. Nevertheless such purpose is evident.

From the point of view of financing, capital stock is regarded as the means to an important end—the acquisition of cash, property and services essential to the prosecution of purposes for which the company was organized. In this connection many questions of practical expediency arise the answers to which are found in the condition of the market in

which the capital stock is to be sold, as well as other considerations more or less peculiar to the enterprise in question.

2. Capital Stock vs. Capital

The distinction between capital and capital stock is of fundamental importance. Capital is the excess of assets over liabilities and may be either greater or smaller than capital stock. Only at the moment of commencement of business are the two likely to be the same. Thereafter capital stock remains unchanged, except when additional shares are issued, whereas capital is changing constantly, although record of its amount may be made only when the monthly or annual balance sheets are compiled. If a company prospers, its capital increases, the excess thereof over capital stock being surplus. If a company incurs net losses each year its capital diminishes, and the excess of capital stock over capital is known as a deficit.

3. Capital Stock vs. Capitalization

By capitalization is usually meant the capital of a company plus its bonded indebtedness. In speaking of the capital structure of a corporation its capitalization is usually meant. Thus the Hood Rubber Company, a Massachusetts corporation, reported its capitalization as at December 31, 1927, as follows: $10,600,000 funded debt; $5,627,300 7½% cumulative preference stock; $642,700 7% preferred stock; $179,740 special employees' 8% preferred stock; prior preferred stock of a subsidiary, $1,000,000; common stock $9,810,000; and a surplus of $3,852,053 to be added to the equity of the common stock.

The capitalization of the American Superpower Corporation, after completion of financing in process at time of this writing, will be: 250,000 shares of $6 dividend preferred stock; 267,210 of $6 dividend preference stock; both cumulative; 521,862 class A common stock and 814,188 shares of class B common stock; all shares being of non par value. The company has no funded debt.

The balance sheet of the Hupp Motor Car Corporation as at December 31, 1927, showed a capitalization of 1,051,899 shares of $10 par value stock, valued at $10,051,899, a surplus of $10,816,497, and a reserve for unrealized profit on sale of capital assets of $312,099; no funded debt.

The F. W. Woolworth Company was incorporated with an authorized capital stock of $65,000,000, consisting of $15,000,000 of 7% cumulative preferred stock, and $50,000,000 common stock, both of $100 par value. All of this stock was issued. Through operation of the preferred stock sinking fund $3,000,000 of the preferred was retired by 1920. At that time the authorized common stock was increased to $100,000,000 and in June of that year a 30% stock dividend was paid, thus increasing the outstanding common stock to $65,000,000. In February, 1923, the balance of the preferred was retired at $125. The par value of the common was changed to $25 in 1924, four shares of the new stock being exchanged for one share of the old. In February, 1927, a 50% stock dividend was paid, bringing the total number of outstanding shares to 3,900,000, with a par value of $97,500,000. As at December 31, 1927, the surplus was $33,154,272, and a purchase money mortgage for $3,546,500 together with a reserve for employees' benefit fund of $100,000 completed the capitalization.

As at December 31, 1927, the capitalization of Sidney Blumenthal and Company consisted of $1,648,000 of funded debt; 24,082 shares of 7% cumulative preferred stock, listed on the balance sheet at $110 per share, although its par is $100; and 238,212 shares of non par common stock. The funded debt consists of a 7% first mortgage issue due in 1936.

The capitalization of the American Smelting and Refining Company as at December 31, 1927, consisted of $60,998,000 common stock, $50,000,000 preferred stock, and $47,591,400 funded debt, a seemingly well balanced capital structure.

The funded debt consists of two classes, viz., a series A first mortgage 5% issue, and a series of B 6% issue. Both

issues rank equally, being secured by a first mortgage on all fixed assets of the company located in the United States, as well as by the deposit of stocks of certain subsidiary companies.

The series A 5s mature in 1947, being callable at par after October 1, 1930, on any interest date. The series B 6s mature in 1947, being callable at 107½ to 1932, and thereafter at par plus ¼% for each six months to date of maturity.

The $50,000,000 preferred stock outstanding is entitled to cumulative preferential dividends of 7% annually on the $100 par value. This stock is non-callable.

4. Issuance of Shares

The procedure followed in issuing the shares of stock of a corporation varies with circumstances. In case of small corporations the secretary usually acts as transfer agent, hence it is his duty to supervise the issuance of shares in the first instance. In case of large companies it is usual to appoint a trust company to act as transfer agent. There are exceptions, however, as in case of the Bethlehem Steel Corporation which has its own department to take care of transfers and account for them. In addition it is customary to appoint a registrar whose duty it is to see that the authorized issue is not exceeded in case of issuance of new stock. Both these agents are appointed by authority of the board of directors. It is customary for the proper officials of the company to sign quantities of the certificates in blank, turning them over to the transfer agent to be issued as occasion demands. The corporation prepares a list of names of those to whom shares are to be issued, showing how many shares are to be issued to each, in case of new issues, and gives it to the transfer agent. In exceptional cases the duties of registrar and transfer agent are performed by the same institution. Stocks listed on the New York Stock Exchange must be registered with an independent company having its office in the Borough of Manhattan.

5. Par Value vs. Non Par Value Stock

Until 1912, all stock issued by authority of state legislation was of the par value type. That is, each share was assigned a given but arbitrary value, usually but not necessarily $100, but all shares of a given issue were equal in this as in other respects. In such cases the capital stock is ascertained by multiplying the number of shares by the par value of each share. Various reasons led to the employment of shares having a par value and various reasons have been advanced in favor of their retention. Since 1912, in which year New York passed laws permitting the issuance of shares without par value, there has been a growing tendency to adopt the non par value form of capital stock. Non par capital stock is considered in detail elsewhere.

6. Authorized Stock

The authorized capital stock of a corporation is that amount which, by the provisions of its charter, it is permitted to issue. This is a fixed amount and can be increased only by amendment of the charter. Sometimes the total amount authorized is issued when the corporation is launched, but frequently a greater amount of stock is provided for in the charter than is required for present purposes, in order that when the growth of the company demands the investment of more funds they may be secured by selling stock already authorized rather than by going through the expensive and dilatory process of amending the charter. On the books of account the authorized stock may or may not be formally entered. A formal entry for the authorized issue would be somewhat as follows:

Unissued Capital Stock	$200,000	
To Authorized Capital Stock		$200,000

To record formally the authorization of an issue of 2,000 shares of common stock having a par value of $100 each.

Whether such formal entry should be made is a matter of taste and opinion. The amounts expressed in dollars signify nothing except to indicate the limit beyond which the company may not go in the issuance of stock without amending its charter.

Considerable attention should be given to the amount of authorized stock for which incorporation should be sought because if excessive for the purpose of the company unnecessarily heavy incorporation taxes may be incurred, while if too small the company will soon be inconvenienced by the necessity of having its charter amended.

Sometimes the major portion of an authorized issue of stock remains unissued for a considerable period. Thus the Hartman Corporation in its reorganization secured the authorization of an issue of "A" stock for the purpose of paying dividends therefrom on its "B" stock, thus enabling it to strengthen its working capital position. The "A" stock is issued in small instalments and at this time (February, 1928) but a small part of the stock issue is outstanding.

In some states the statutes prescribe the minimum amount of capital stock, but no state prescribes the maximum which a company may issue.

7. Issued Stock

As the name implies, issued stock is that which has been sold or in some other way placed in the hands of the stockholders. Issued stock may be either full paid or part paid, also it may be either outstanding or treasury, i. e., bought back and held by the company for reissue.

8. Treasury Stock

Treasury stock arises in various ways. Under the régime of par value stocks a frequent occasion for the creation of treasury stock was the necessity of avoiding the liability feature attaching to such stock. Stock once issued as full paid and returned to the treasury may be sold at any price

obtainable without creating any liability on the buyer's part. The usual procedure is to issue stock for property upon which a valuation has been placed sufficiently high to render the stock full paid. The recipient then returns a part of the stock to the treasury of the company after which it may be sold for whatever price is obtainable. Many questionable practices have arisen in connection with this procedure and the illogical consequences constitute one of the main reasons for the adoption of non par value stock. When non par value stock is authorized there is little or no reason for treasury stock, since it may be marketed at whatever price it will bring. It does not necessarily follow that property exchanged for stock part of which is donated to the treasury of the issuing company is necessarily overvalued. Not infrequently the error is made of calling unissued stock treasury stock.

There appears to be at least one use to which treasury stock may be put for which unissued non par value stock is not available, viz., the payment of a bonus.

The duty of making an adequate valuation of property received in payment for stock falls to the board of directors and in the absence of fraud their decision is final.

9. Preferred Stock

When capital stock is all of one class it is common. In many cases two or more classes of stock are found in the same corporation, however, and most frequently these are designated as common and preferred. As a rule preferred stock arises when one group of stockholders is given the right to receive a stated dividend before any dividend is paid on the other stock, or where it is given the right of redemption out of assets in case of liquidation, or both. Other preferences may sometimes be found but these are the most common. Also various conditions as to redemption, voting rights and miscellaneous matters serve to differentiate the various classes of stock sometimes found on the balance sheet of a corporation.

Since the advent of non par value stock a preference as to dividends does not always mean that the stock is called a preferred stock. Not infrequently we find two classes of common stock, "A" and "B," in which the "A" stock possesses certain privileges which in effect constitute it a preferred stock.

Participating preferred stock is that which shares equally with the common stock in dividends after its preference dividend is satisfied. Thus a 6% participating preferred stock first receives this dividend; then if there remains surplus to be distributed as dividends both common and preferred stock receive the same amount thereof per share.

Non-participating preferred stock, after having received the stated dividend, does not share with the common stock in the surplus remaining to be distributed, if any.

Cumulative preferred stock is paid its dividend if profits are available, but if not available in any given year the dividend thus passed must be made up from profits of succeeding years. Unless specified to the contrary preferred stock is cumulative. Arrearages on cumulative preferred stock do not bear interest unless so specified. Sometimes preferred stock is made non cumulative for a number of years after which the cumulative feature becomes effective, thus giving the company opportunity to get well established before being required to undertake the obligation of caring for any arrearages in dividends.

Illustrative of cumulative preferred stock is the issue of cumulative preferred stock of Sidney Blumenthal and Company, consisting, as at December 31, 1927, of 24,082 shares, and carrying a 7% cumulative dividend. No dividends having been paid on this stock since April 1, 1925, the accumulated unpaid dividends amounted to 21% on April 1, 1928. There is provision for a sinking fund to retire this stock, but it is not operative at present (1928).

Not infrequently the restrictions placed on preferred stock are as important as are the preferences granted to it. Thus it may be deprived of the vote, or deprived of the vote so

long as it receives its dividend but given the vote in case of failure of the company to pay the dividend. Where preferred stock is made non participating it is definitely restricted to the specified dividend regardless of the earnings of the company. Moreover, the preference as to assets in case of liquidation may be found to be of little value when insolvency occurs due to the shrinkage in asset values and the prior liens of creditors.

10. Relation of Preferred and Common Stock

Originally common stock was issued for cash or property possessing value equivalent to its par value, but recently many issues of common stock have represented little else than prospects of future increased earnings. In such cases the preferred stock has oftentimes represented practically all of the real proprietorship, except possibly the power of control.

Railroad reorganizations have frequently resulted in the issuance of preferred stock by compelling bondholders, especially junior lien bondholders, to accept preferred stock in place of their bonds, thus enabling the company to scale down its fixed interest charges. This tends to add to the value of the common stock.

Preferred stock possesses the same voting right as does common stock unless expressly deprived of it.

11. The Redemption Privilege

A common provision of preferred stock is that permitting the redemption thereof under certain conditions. The laws of some states expressly permit this, but in the absence of such permission there is nothing to prevent the corporation from adopting such plan of redemption of preferred stock as it sees fit. It should, of course, be provided for in the charter as must all other specifications regarding capital stock.

The redemption feature is likely to keep the market price

of a stock down because nobody cares to pay more for the stock than may be returned to him shortly if the company chooses to exercise the redemption privilege.

If stock is redeemed it is a usual requirement that any dividend arrearages be included.

The statutes and charter must be consulted to ascertain whether stock once redeemed may be reissued.

The equivalent of redemption is sometimes accomplished by going into the market and buying up outstanding stock, or by some other available plan. In doing this the company officials should observe the statutory provisions relative to stated capital.

Sometimes the redemption of stock is provided for by setting aside a sinking fund. The amount set aside each year is usually calculated on earnings, but a minimum amount may be fixed which must be paid into the fund before dividends are paid on the common stock.

Recently the F. W. Woolworth Company retired $10,000,000 of preferred stock at $125 a share, leaving but one class of stock outstanding.

On February 21, 1928, investment bankers offered for sale 90,000 shares of first preferred non par value shares of the American Superpower Corporation, preferred as to dividends and assets over any other stock of the corporation and redeemable in whole or in part upon 60 days' notice at 110 and accrued dividends.

In the fight for control of the Northern Pacific Railroad between the Harriman and Hill-Morgan interests the Harriman group bought up some $42,000,000 preferred and $37,000,000 common stock out of a total of $75,000,000 preferred and $80,000,000 common stock outstanding. The preferred had the same voting right, share for share, as the common, and the Harriman group thought it had secured control. However, the Hill-Morgan group increased its holdings of common stock to some $42,000,000, and thus secured control of the common stock. Since the preferred stock was redeemable at par by vote of the common stock,

the Hill-Morgan interests redeemed the preferred stock and secured control of the company, to the surprise of their adversaries.

12. Preferred Stock Certificate Illustrated

The variety of preferred stock certificates is endless. The statutes of some states require that the conditions governing issuance, redemption, etc., be shown on the stock certificate itself. All such requirements must be scrupulously observed by the issuing company.

Form 211 shows the preferred stock certificate of the Red Douglas Pocahontas Company, an Illinois corporation. The holders of preferred stock of the Red Douglas Pocahontas Company are entitled to receive cumulative dividends at the rate of 7%; they have a preference as to assets in case of dissolution; and the company may redeem the preferred stock, or any part thereof, after two years from date of issue, at $110 per share, on thirty days' notice.

FORM 211

CERTIFICATE OF PREFERRED STOCK OF RED DOUGLAS POCAHONTAS COMPANY

13. Convertible Stock

Convertible stock is that which may, upon certain conditions, be exchanged for some other form of security of the issuing company. It is unusual to find stock convertible into bonds, but not unusual to find preferred stock convertible into common stock. This convertible feature adds to it a speculative flavor while preserving the investment feature. It is necessary, of course, that the company which issues a convertible security of any kind have ready an authorized issue of the security into which the conversion may be made. Usually the conversion feature, even before the point is reached where conversion is profitable, causes the security to sell on a lower yield basis than would be the case were the conversion feature lacking. After the point is passed at which conversion is profitable the convertible security fluctuates in market price with the fluctuations of the security into which it is convertible, and no longer on an investment basis.

The conversion feature may affect the proportionate income received by various groups of security holders as well as the voting power, and the equity of the old stockholders in surplus. If preferred stock is converted into common stock the issuance of new common stock having the voting power is likely to cause a realignment among groups interested in the control of the company, and is likely to give the directors greater freedom in the matter of dividend policy, especially if the preferred stock dividend was cumulative; and, if the preferred stock was preferred as to assets, to create a new situation regarding the status of common stock generally in case of dissolution.

Illustrative of preferred stock convertible into common stock is the 7% preferred stock of the Richmond Radiator Company, having a par value of $50. It is convertible on a share for share basis.

Sometimes, in case of reorganization, the conversion feature is attached to preferred stock as partial recompense to

bondholders who are compelled to surrender their bonds for such preferred stock. Thus in the reorganization of the Missouri Pacific Railway Company the First and Refunding 5s and Collateral Trust 4s were exchanged for 5% preferred stock convertible into common stock at par.

Another illustration of convertible preference stock is that of the Chicago Towel Company. This stock carries a $7 dividend rate and is convertible into common stock share for share. The capitalization, upon completion of proposed financing, will consist of 20,000 shares of $7 cumulative preference stock of non par value and 80,000 shares of non par value common stock. In case of dissolution, whether voluntary or involuntary, the preferred stock is entitled to $100 a share and accrued dividends. It is redeemable on 30 days' notice at $110 a share. The conversion into common stock may be effected at any time up to within ten days of the date set for redemption.

14. Preferred Stock Exchanged for Bonds

A company is privileged to offer in exchange for securities outstanding any other securities for which its charter provides. Thus on March 1, 1928, the Continental Paper and Bag Mills Corporation declared effective its offer to exchange 7% cumulative preferred stock for outstanding first and refunding 6½% twenty-year sinking fund gold bonds, series "A," the exchange to be made on or before March 31, 1928. By the terms of the offer the company agreed to exchange 8¼ shares of preferred stock for each $1,000 principal amount of the bonds, with all coupons maturing after March 1, 1927, attached, and to make an appropriate dividend adjustment in cash, so that each stockholder exchanging his bonds for such preferred stock received an amount equal to dividends at the rate of 7% per annum on his interest in the shares deliverable under the offer accrued from August 1, 1927, to the date on which the preferred shares began drawing dividends, namely, the regular dividend payment date next preceding the date of issuance and/or delivery of

such preferred stock. Coupons maturing February 1, 1928, which were detached for presentation were treated as if attached, if delivered to the depository with the bonds to which they appertained.

It was provided that acceptance might be made at any time before March 15, 1928, by depositing the bonds with the Chase National Bank of New York, receiving in return deposit receipts, exchangeable for the preferred stock and cash dividend adjustment, such exchange to be made not later than March 31, 1928.

15. Warrants

Sometimes preferred stock is issued with warrants attached giving the holder the privilege of buying stock, usually common stock, at a stated price for a specified time. The preferred stock is not convertible, but the holder of the warrant may dispose of it at a profit whenever the stock he is privileged to buy sells above the price at which his contract permits him to buy it.

16. Guaranteed Stock

If one company issues stock and another company contracts to pay the dividend thereon in case the issuing company fails to do so, the stock is said to be guaranteed. Guaranteed stock arises usually as the result of the desire of a large railroad company to secure control of a small company owning a line of strategic value. In such instances guaranteed stocks rank with gilt edged bonds as high grade investments. Sometimes guaranteed industrial stocks occur. Thus Sears, Roebuck & Company guarantees the preferred stock of the Lake View Paper Company, both as to dividends and as to redemption at par.

17. Bankers' Shares

Bankers' shares, sometimes called certificates of beneficial interest, are issued on the basis of collateral which is de-

posited with a trustee, the income from which is used to pay returns on said shares. The collateral may consist of the securities of one or of several companies. Such procedure is the principle upon which the investment trust operates. These have had a much longer experience in England than in the United States. There the managers are granted greater discretionary power than in the United States. As a rule the investments of a given trust are limited to the securities of companies engaged in one industry, as, for example, stocks of railroad companies or of utility companies.

18. Dividends

In case of par value stock, dividends are quoted as a given per cent of par value; in case of non par value stock they are quoted in dollars per share. A dividend of 5% on a stock having a par value of $100 amounts to $5; whereas a dividend of 5% on a share having a par value of $25 amounts to $1.25.

As a rule, dividends are paid quarterly, but occasionally semiannually, especially among railroad stocks. They are payable in cash, property, stock, or scrip. Scrip dividends are paid when the company is under the necessity of conserving its cash. The scrip takes the form of a promissory note, bearing interest, which the company agrees to redeem at a specified later date. If negotiable in form such notes may be readily bought and sold. Form 212 shows a scrip dividend.

FORM 212

INTEREST CERTIFICATE

The.....Company
Interest Certificate

No.....

By a resolution of the board of directors of this Company, passed ....., 19.., the .....Company hereby certifies that ....., being the holder of ..... shares of the capital stock of said Company, is entitled to ..... Dollars,

payable ratably with the other certificates issued under said resolution, at the pleasure of the Company, out of its future earnings, with dividends thereon, at the same rates and times as dividends shall be paid upon the shares of the capital stock of said company.

This certificate may be transferred on the books of the company on the surrender of this certificate.

In Witness Whereof, the said company has caused this certificate to be signed by its President and Treasurer, this ..... day of ....., 19....

.....
President

.....
Treasurer

For a valuable consideration, I, ... do hereby assign, and transfer all interest in the above certificate to ....., and do hereby irrevocably appoint ..... attorney, to execute a transfer thereof on the books of the ..... Company therein mentioned.

In case of stock dividends a share of stock is issued for each specified number of shares held by the stockholders. Thus where a 50% stock dividend is declared one share of stock is issued for each two shares outstanding. Such a dividend does not affect the net worth of the company but merely increases the number of units into which it is divided.

Dividends may be regular or extra. The regular dividend is that which is paid quarterly and which the company ordinarily expects to continue paying year after year. Extra dividends are not permanent, but are paid because of the effect on surplus of an unusually prosperous year, or for other reasons resulting in temporary abundance of available funds.

The power to declare dividends rests solely with the board of directors.

On the day announced for the closing of the books shares of stock sell ex-dividend, i. e., less the amount of the dividend. This is because the dividend is payable to the stockholders whose names appear on the list compiled on that day. It is becoming customary, however, not to close the books for dividend purposes, the list of stockholders entitled to receive

the dividend being taken as of the close of the day designated by the board of directors. This plan has received the commendation of the New York Stock Exchange.

19. Stock Rights

Sometimes companies give their stockholders the privilege of subscribing to new stock issues at a price below the current market price. Such privileges are usually known as "stock rights," or simply "rights." This is done to enable the stockholders to retain their proportionate interest in the control and earnings of the company, by buying the same proportionate part of the new issue as their old holdings were of the amount of stock previously outstanding. Since rights give the old stockholder the privilege of buying new stock below the market price they possess value and may be bought and sold. If a company has its stock listed on the New York Stock Exchange and decides to offer for sale an issue of new stock amounting to 25% of that now outstanding, then an owner of one share of the old stock acquires the right to buy one-fourth of a share of the new stock.

To accomplish a successful sale of stock by means of stock rights certain favorable conditions must surround the issue, creating in the minds of the existing stockholders confidence that a purchase of additional stock will accrue to their advantage. It is inevitable, however, that not all stockholders will care to exercise their rights but will dispose of them, so that there will occur a certain amount of trading in them. Before the rights are issued they are traded in on "when, as, and if issued" basis. As soon as definitive action is taken by the board of directors the stockholders are notified thereof, and are fully informed as to the conditions of the proposed issue. Before issuance, the trading in rights will be transferred from the Curb to the New York Stock Exchange, where trading will be carried on on a "when issued" basis. The old stock sells "rights on" from the date announcement is made of the issuance of rights to the day fixed by the Committee on Securities for selling such stock

"ex-rights." This is usually the day as of which the stockholders of record are entered on the list of those entitled to receive such "rights." To these, warrants to purchase new stock are issued for the number of rights to which each is entitled. These warrants expire at a fixed date, and before this the holder must state to the company what stock he expects to buy. If the new stock is payable in instalments subscribers may pay in whole or in part. If they pay in full they are given temporary certificates exchangeable at a later date for permanent certificates. If they pay in instalments they are given assignable certificates which are turned in as each instalment is paid and new ones issued showing how many instalments have been paid. On payment of the final instalment the permanent certificates are issued and the temporary certificates surrendered.

20. Value of Rights

Formulas for determining the value of stock rights have been developed. Thus,

$$\frac{P \times R}{1 + R} = \text{value of a New York right.}$$

P is the difference between market price of a share and that at which it is offered to old stockholders—usually its par value. R is the ratio of the new stock to the old. Thus if the old stock sell for $150 a share and a new issue equal in amount to one-half the shares outstanding is offered to the old stockholders at $130 a share, the value of a right is:

$$\frac{\$20 \times .5}{1 + .5} = \$6.66\ 2/3$$

Another formula:

$$\frac{M - S}{R + 1} = \text{value of a New York right.}$$

M is the market price of the old stock; S the price at which the new stock is offered to old stockholders; R the number of

shares of old stock entitling holder to one share of the new. Application of this formula to the above problem results as follows:

$$\frac{\$150 - \$130}{2 + 1} = \$6.66\ 2/3$$

This latter formula is especially adapted to valuation of non par value stock rights.

In practice, the market value of rights fluctuates in the same manner as does the price of stock. Sometimes it vanishes altogether, as where the old stock falls in market value below the offering price of the new stock made to the old stockholders. Stock rights are listed and traded in as are stocks.

Directors are under obligation to offer "rights" to stockholders and if they fail to do so shareholders may recover damages, the extent of their claim being measured by the difference between the value of the shares at the time of the refusal of the board to offer the rights and the price at which the stockholders could have bought the shares had they possessed the rights to which they were entitled.[1]

21. Splitting of Stock

Sometimes the market price of capital stock becomes unusually high, due to prolonged prosperity. High-priced shares are unpopular as investments with persons of limited means, and to popularize their stock corporations sometimes split their shares into parts, i. e., issue in exchange for the outstanding shares a larger number of new shares. Sometimes, where non par stock is employed, a split is made to avoid the appearance of large dividends. For instance, by doubling the number of outstanding shares and halving the dividend paid per share the appearance of lower dividends is accomplished while the stockholders continue to receive the same return on their investment as before.

[1] For a thoroughgoing discussion of stock rights see Dice: *The Stock Market,* A. W. Shaw Company, Chicago, Chapter xix.

NON-PAR VALUE CAPITAL STOCK

22. Historical Note

The subject of non-par stock was first given serious consideration in this country in 1892, when a committee of the New York Bar Association recommended a provision in the corporation laws of New York State for the formation of a distinct class of business corporations "whose capital stock may be issued as representing proportional parts of the whole capital without any money or nominal value." The committee said, in part:

> The effect of such amendment would be to provide for the measurement of the interest or shares of the members of such a corporation by a statement of proportion, as in the case of the part owners of a ship, and not by an arbitrary assignment of money value, which is delusive in the case of every corporation whose capital stock has a market value either more or less than its nominal par value. Such an amendment, though somewhat radical, is not altogether novel. It embodies a principle adopted in the corporation laws of Germany. It would relieve any possibility of injury to the public from misleading representations as to the money value of corporate stock, and would also relieve from embarrassment conscientious corporate officers often compelled to deal with legal fiction as to which they have no personal knowledge, as though it were a reality within their own observation.[1]

In 1908 the Public Service Commission of New York, Second District, approved the idea of non-par stock.

In 1907 the New York Bar Association prepared a bill which passed the legislature but was vetoed by the governor. Somewhat altered, the same bill was again passed in 1912 and became a law. Since then no less than thirty-nine states have adopted non-par legislation, as follows:

1912 New York
1916 Maryland
1917 California, Delaware, Maine

[1] *Proceedings, N. Y. State Bar Association,* 1892, Vol. 15, p. 138. For further discussion by E. M. Shepard, see *Publications of Bar Association of New Hampshire,* 1906, new series, Vol. 2, pp. 273-297; *Reports of Illinois Bar Association,* 1907, Pt. II, pp. 29-60.

1918 Virginia
1919 Alabama, Illinois, New Hampshire, Ohio, Pennsylvania, Wisconsin
1920 Massachusetts, New Jersey, Rhode Island, West Virginia
1921 Colorado, Idaho, Kansas, Michigan, Missouri, North Carolina, Utah
1922 Arizona, Georgia
1923 Arkansas, Connecticut, Florida, Indiana, Nevada, New Mexico, Oregon, Tennessee, Washington
1924 Louisiana
1925 Minnesota, Texas, Vermont
1926 Kentucky
1927 South Carolina

The Dominion of Canada adopted non-par stock legislation in 1917 and the Territory of Alaska in 1923.

The Railroad Securities Commission was appointed by President Taft in 1910, "to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations, and the power of Congress to regulate or affect the same." Concerning non-par stock the Commission said:

We do not believe that the retention of the hundred dollar mark or any other dollar mark, upon the face of the share of stock, is of essential importance. We are ready to recommend that the law should encourage the creation of companies whose shares have no par value, and permit existing companies to change their stock into shares without par value whenever their convenience requires it. After such conversion, any new shares could be sold at such price as was deemed desirable by the board of directors, with the requirements of publicity as to the proceeds of the sale of such shares and as to the disposition thereof; giving to the old shareholders, except in some cases of reorganization or consolidation, prior rights to subscribe pro rata, if they so desired, in proportion to the amount of their holdings.

As between the two alternatives of permitting the issue of stock below par, or authorizing the creation of shares without par value, the latter seems to this Commission the preferable one. It is true that it will be less easy to introduce than the other, because it is less in accord with existing business habits and usages, but it has the cardinal merit of accuracy. It makes no claims that the share thus issued is anything more than a participation certificate.

The objections to the creation of shares without par value are two in number: First, that their issue will permit inflation, by

making it easy to create an excessive number of shares; and second, that it will produce a division of roads into two classes, those whose shares have a par value, and those whose shares have not. The second of these objections does not appear to be a very serious one. There are listed on the stock exchanges today, side by side with one another, shares of the par value of one hundred dollars, shares of the par value of fifty dollars, shares with very much smaller par value, and a few, like the Great Northern Ore Certificates, with no par value at all. The share sells in each case simply for what the public supposes it to be worth as a share. The danger of inflation deserves more serious consideration. We believe, however, that it is more apparent than real, because shareholders will be jealous of permitting other shareholders to acquire shares in the association except at full market value, and will not permit the issue of shares to themselves at prices so low as seriously to impair the market or other value of their holdings. Shares either with or without par value, and whether sold at par or above par or below it, should, except in cases of consolidation and reorganization, be offered in the first instance to existing shareholders pro rata.

The issue of stock without par value offers special facilities for consolidation and reorganization.

When two roads consolidated whose shares have different market values, it has been the custom to equalize the difference by the issue of extra shares of the consolidated company to the owners of the higher priced stock. This practice has always tended to produce increase of capital issues, and may readily cause the new stock to be issued for a consideration less than its par value. The only alternative was to scale down some of the old stocks; and this often involved serious difficulties, both of business policy and of law. By the simple expedient of omitting the dollar mark from the new shares, the number can be adjusted to the demands of financial convenience, without danger of misinterpretation or suspicion of unfairness to anyone.

In the case of reorganizations the advantages of shares without par value are even more obvious. It is here that the necessity and justice of getting money from stockholders is greatest. It is here that the impossibility of getting them to pay par for new shares is most conspicuous. We believe that in such cases the public interest would be subserved and the speedy rehabilitation of the road promoted, by requiring the conversion of the common stock and encouraging the conversion of the preferred stock into shares without par value; the certificate simply indicating the proportion or preferential claims of the holders upon assets and upon such profits as might from time to time be earned.

All of these considerations seem to apply with equal force to the securities of railroads under state incorporation, and we believe the laws of the several states could with advantage be modified so as to provide for the issuance of stock without par value.[1]

The Wisconsin Edison Company was the first large concern to organize under the New York law. Such concerns as Kennecott Copper, Wm. Wrigley, Jr., Company, General Motors Corporation, Wilson & Company, Inc., Radio Corporation of America, The Hartman Corporation, Sinclair Consolidated Oil Corporation, Loew's, Inc., Columbia Graphophone, New York Air Brake, and innumerable others have since adopted the plan of non par shares.

23. Concept of Stated Capital

Previous to the era of non-par capital stock the concept of stated capital had become thoroughly embedded in our theories regarding legislation affecting corporations. According to generally accepted notions, stated capital was a fund held always available for the protection of the creditors of the corporation. In general, stated capital was measured by the par value of the capital stock issued, and in case of stock not fully paid up the unpaid portion was nevertheless regarded as part of stated capital because the purchasers of such stock were held liable thereon to the amount of its par value in case of the insolvency of the company. This concept of the function of capital stock is closely related to the trust fund theory of capital stock, whereby the amounts paid in as well as the remaining liability on stock not fully paid is regarded as a fund held in trust for the creditors.

Whether or not the trust fund theory of capital stock be adhered to, the notion upon which it is based, namely, a stated sum permanently retained for the protection of creditors is so firmly implanted in our legal conception of what is proper that in the attempt to introduce non-par stock legislation it could not be ignored. Consequently, in non-par

[1] *Report Railroad Securities Commission,* 1911. Reproduced in Slason Thompson *Railway Library,* 1911.

stock legislation we frequently meet with some attempt to retain this feature of par value stock without at the same time sacrificing the flexibility and convenience of non-par value stock. This has caused considerable confusion, as has the use of the closely related term, "stated value," which refers essentially to the same thing, but brings it down to the individual share, assigning thereto a definite value, and thereby apparently overlooking the principle which underlies the creation of non-par stock issues. The desirability of assigning a stated value to non-par value shares has been seriously questioned.

Sometimes the directors are empowered to place a stated value per share on non-par stock, perhaps not going below a prescribed minimum; and the result is sometimes to create shares with a market or exchange value far different from their stated value.

24. Statutory Requirements Relative to Stated Capital

The provisions of the laws of the various states differ, but the following extracts will serve to illustrate the principal points involved. The *Public Acts of Connecticut of 1923,* Ch. 168, Sec. 4, provide:

> Subject to any limitations and restrictions set forth in the certificate of incorporation, any such corporation may, at any meeting warned and held for that purpose, empower its directors to issue shares of its unissued authorized capital stock without par value and may authorize its directors to fix the amount of money or the actual value of the consideration for which such stock shall be issued, provided the certificate of incorporation or any amendment thereto or agreement of consolidation of any such corporation may empower the directors thereof to issue, from time to time, shares of such stock without par value for such consideration as the directors may deem advisable, subject to such limitations and restrictions as may be set forth therein. At the time for the filing of its next annual report after the issue of any such shares, a majority of the directors shall make and file a certificate setting forth the facts relating to such issue similar to the facts relating to the original issue of stock required by subdivisions (1) to (5), inclusive, of section 3514 of the general statutes.

The *Illinois General Corporation Act of 1919,* Sec. 32, as amended by Laws of 1921, p. 369, provides:

Subject to the provisions of this section, the corporation may issue and sell its shares of stock having no par value from time to time for such consideration, not less than five nor more than one hundred dollars per share, as may be prescribed in the certificate of incorporation or as from time to time may be fixed by the board of directors pursuant to authority conferred in such certificate. The consideration received for such shares shall be truthfully stated in all papers required to be filed in the office of the secretary of state and in case such shares are issued for property the appraised value of such property shall be given.

The provisions of the Connecticut law are fairly typical of state legislation on the subject of what consideration shares of stock may be issued for, leaving the matter to the discretion of the board of directors, subject to such restrictions as may be imposed upon them by the charter.

The Illinois law is unusual in that it requires that shares having no par value shall not be issued for less than five nor more than one hundred dollars per share; but otherwise for such consideration as prescribed in the charter or as may be fixed by the board of directors "pursuant to authority conferred in such charter."

In the second New York law a provision was inserted fixing a minimum amount of capital necessary to begin business, and for many years it was provided that a corporation chartered in New York must not carry on with less capital than that stated in its charter, thus giving rise to the expression "stated capital."

The present New York law (*Stock Corp. Law,* Sec. 12, as amended by *Laws of 1924,* Ch. 441, Sec. 4) provides that the certificate of incorporation shall include either of the following statements:

A. The capital stock of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus ..... dollars (the blank space being filled in with some number representing one dollar or more) in respect to every issued share without par value, plus such amounts as,

from time to time, by resolution of the board of directors, may be transferred thereto; or

B. The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as, from time to time, by resolution of the board of directors, may be transferred thereto.

There may also be included in such certificate an additional statement that the capital shall not be less than ..... dollars (the blank space being filled in with a number).

Such statements in the certificate shall be in lieu of any statements prescribed by the law under which the corporation is formed as to the amount or the maximum amount of its capital stock or the number of shares into which the same shall be divided, or of which it shall consist.

Provision B makes no mention of a stated capital, but provision A requires the statement of some amount in dollars for "every issued share without par value," while the paragraph immediately following provision B provides for the optional statement in the charter of a minimum sum in dollars for the capital of the corporation.

It is apparent, therefore, that in New York the charter may provide for a stated capital, consisting of the aggregate par value of all issued shares having a par value plus such arbitrary sum as may be computed with reference to the non-par shares.

Giving such a stated value to non-par stock endows it with qualifications of par value stock and apparently such as it is the purpose of the creation of non-par stock to eliminate.

The laws of most states contain some provision permitting the corporation to provide in its charter for a stated capital. Thus in Arkansas "corporations may issue and dispose of their authorized shares having no nominal or par value for such consideration as may be prescribed in the original charter," etc. *Laws of 1923*, Art. 247, Sec. 3. In Colorado, "such stock may be issued by the corporation from time to time for such consideration, in labor done, services

performed or money or property actually received, as may be determined from time to time by the board of directors, unless otherwise provided in the certificate of incorporation or an amendment thereof." *Compiled Laws of 1921,* Sec. 2248. In Florida, "corporations may issue and dispose of their authorized shares without nominal or par value for such consideration as may be prescribed in the certificate of incorporation or in any amendment thereof," etc. *Corp. Law of 1925,* Sec. 10. In Kansas, "such corporation may issue and may dispose of its authorized shares having no nominal or par value, from time to time, for such consideration as may be prescribed or authorized in the articles of association," etc. *Rev. Stat. 1923,* Sec. 17-305. In Louisiana, "a corporation may issue and dispose of its authorized shares having no nominal or par value for such consideration as may be prescribed in the articles of incorporation," etc. *Laws of 1924,* Act. 96, Sec. 3. In North Carolina the board of directors determine the consideration for which non-par value stock may be issued, "subject to such conditions or limitations as may be contained in the certificate of incorporation," etc. *Laws of 1921,* Sec. 2, as amended by *Laws of 1925,* Ch. 262.

While these provisions make no express mention of stated capital, it is evident that they grant great latitude to the charter provisions, so that the latter might contain provisions equivalent to the requirement of a par value. It is for the incorporators to determine what they wish to put in the charter, but in providing for what is in effect a stated capital they should bear in mind that they are approximating, in a non-par value stock issue, one of the fundamental features of par value stock.

It is possible that stated capital may be fixed so arbitrarily as to bear little or no relation to paid in capital, hence it is apparent that for accounting purposes stated capital should be ignored. Thus in one instance a company, organized under laws making no reference to stated value, by resolution of its board of directors exchanged its capital stock of

500,000 shares at a stated value of $1 per share for property valued at $752,850, thus at the outset creating a surplus of $252,850.

25. Analysis of Proprietorship; Dividends

No balance sheet may be said to be satisfactory which does not afford a satisfactory analysis of proprietorship. Ordinarily the proprietorship of an enterprise consists of the original contributions of the shareholders plus accumulated but undistributed profits or minus deficits resulting from distribution of profits plus losses in excess of profits made since organization. Sometimes appreciation of assets is reflected on the balance sheet, in which case an additional element of proprietorship arises. It is this composite status of surplus that cannot be ignored without serious consequences to the financial affairs of a corporation; but the introduction of non-par value stock has in some instances led to the abandonment of the established earmarks of surplus.

It is a generally accepted principle that dividends may be declared only from surplus, and the laws of many states contain some provision to that effect. One of the first results of attempts to introduce non-par value stock was to break down the traditional distinction between capital stock and surplus, but experience has shown that it is just as necessary to make the distinction in case of non-par value stock as in case of par value stock. The accountability of the company to stockholders and to creditors is the same in either case. In case of par value stock a line of demarcation is automatically established between capital stock and profits, but this is not always true in case of non-par value stock.

Following are extracts from the laws of some of the states relative to dividend payments:

Alabama:

The directors of any corporation, when authorized to do so at any regular or called meeting of the stockholders, may issue additional stock or increase its capital stock, pursuant to law, in

the nature of stock dividends and pay for such stock in whole or in part out of its surplus or accumulated profits. *Code of 1923, Section 6990.*

Whenever any corporation shall have a surplus of money, which is properly subject to distribution as dividends, or whenever the net assets of a corporation, after deducting therefrom its liabilities, except for capital stock, exceed in value the par value of its outstanding capital stock, the board of directors of said corporation may declare a stock dividend, and issue such stock so declared to its stockholders, to the extent of such surplus of money, or to the extent of such excess in value of its net assets over the par value of its outstanding stock. No stock dividend shall be based, in whole or in part, upon the valuation of other than tangible assets. Before the board of directors of any corporation shall be authorized to declare any such stock dividend, other than on a surplus of money, it shall order the appraisal of all tangible assets of the corporation by a competent appraiser or appraisers, who shall not be a stockholder or otherwise connected with the corporation, and the report of such appraiser or appraisers under oath shall be filed and entered on the minutes of the board of directors. Whenever any stock dividends necessitate an increase of the capital stock, said increase shall be made as authorized by Section 7003. *Code of 1923, Section 6991.*

This provision refers exclusively to stock dividends. We may infer that any surplus, whether arising from profits or from revaluation of assets, may be made the basis of such a dividend.

California:

Unless it shall have been first permitted or authorized so to do by the commissioner of corporations, no such corporation shall declare or pay any dividend which shall reduce the amount of its stated capital. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of any meeting of the directors at which such action was taken or who were not present when such action was taken, shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors by reason for such dividend. *Civil Code, Section 290c, as added by Laws of 1923, Chapter 293, and amended by Laws of 1927, Chapter 714, Section 2.*

This provision refers to corporations organized under the non-par stock law and recognizes "stated capital" as a sum which cannot be reduced by dividend declarations. Other provisions regarding dividends are found in the laws of California relating to business corporations generally which are to the same effect as the above, namely, that dividends may be paid only from surplus profits of the business.

Colorado:

If the directors, trustees or other officers or agents of any corporation shall declare and pay any dividend when such corporation is insolvent, or any dividend the payment of which would render it insolvent or would diminish the amount of its capital stock, all directors, trustees, agents or officers assenting thereto shall be jointly and severally liable for all debts of such corporation then existing, and for all that shall thereafter be contracted while the capital remains so diminished. *Compiled Laws of 1921, Section 2270.*

Florida:

Dividends may be paid to stockholders from a corporation's net earnings or from the surplus of its assets over its liabilities including capital, but not otherwise. When the directors shall so determine dividends may be paid in stock. *Corporation Law of 1925, Section 23.*

The directors of a corporation shall not make dividends except as provided in section 23 [*see above*] hereof nor shall they divide, withdraw or in any way pay to the stockholders or any of them any part of the capital of the corporation or decrease its capital except as provided by this act; in case of any wilful or negligent violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered upon the minutes of the meeting of the directors at the time, or, who not then being present, shall have filed their written dissent therefrom with the corporation on learning of such action, shall be liable at any time within two years after each such violation, to the corporation, and in the event of its dissolution or insolvency, to its creditors, or any of them, to the full amount of the dividends made or of any loss sustained by the corporation by reason of such withdrawal, divisions or decrease of capital. But no action shall be brought hereunder by the creditors of a corporation until

judgments for their claims are recovered against the corporation and executions thereon have been returned unsatisfied in whole or in part. *Corporation Law of 1925, Section 23.*

Missouri:

No corporation having shares without nominal or par value, issued under the provisions of this act, shall declare or pay any dividend out of capital or out of anything except net profits or surplus earnings. In case any such dividend shall be declared or paid other than from net profits or surplus earnings, the directors voting for such dividend shall be liable, jointly and severally, to such corporation, and to the creditors thereof, to the full amount by which such dividend shall have been paid out of capital. *Laws of 1921, p. 662, Section 8.*

This provision refers to corporations having non-par value stock. A similar provision is found in the statute relating to business corporations generally.

New Jersey:

Unless otherwise provided in the original or amended certificate of incorporation, or in a by-law adopted by a vote of at least a majority of the stockholders, the directors of every corporation organized under this act shall have power in their discretion from time to time to fix and to vary the amount of the working capital of the corporation and to determine what, if any, dividends shall be declared and paid to stockholders out of its surplus or net profits. Dividends may be declared and paid in capital stock with or without par value. *Compiled Statutes, Section 47, as amended by Laws of 1926, Chapter 318, Section 14.*

The directors of a corporation shall not make dividends except from its surplus, or from the net profits arising from the business of such corporation, nor shall it divide, withdraw, or in any way pay to the stockholders or any of them any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law; in case of any wilful or negligent violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or who not then being present, shall have caused their dissent therefrom to be so entered upon learning of such action, shall jointly and severally be liable at any time within six years after paying such dividend, to the

stockholders of such corporation, severally and respectively, to the full amount of any loss sustained by such stockholders, or in case of insolvency to the corporation or its receiver to the full amount of any loss sustained by the corporation, by reason of such withdrawal, division or reduction. *Compiled Statutes, Section 30.*

New York:

No stock corporation shall declare or pay any dividend which shall impair its capital or capital stock, nor while its capital or capital stock is impaired, nor shall any such corporation declare or pay any dividend or make any distribution of assets to any of its stockholders, whether upon a reduction of the number of its shares or of its capital or capital stock, unless the value of its assets remaining after the payment of such dividend, or after such distribution of assets, as the case may be, shall be at least equal to the aggregate amount of its debts and liabilities including capital or capital stock as the case may be. In case any such dividend shall be paid, or any such distribution of assets made, the directors in whose administration the same shall have been declared or made, except those who may have caused their dissent therefrom to be entered upon the minutes of the meetings of directors at the time or who were not present when such action was taken, shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend or distribution. *Stock Corporation Law, Section 58.*

South Carolina:

The directors of every corporation created under this chapter shall, in January of each year, unless some specific time for that purpose is fixed in its charter, or by-laws, and in that case at the time so fixed, after reserving, over and above its capital stock paid in, as a working capital for the corporation, whatever sum has been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount reserved, and pay it to the stockholders on demand. The corporation may, in its certificate of incorporation or by-laws, give the directors power to fix the amount to be reserved as a working capital. *Consolidated Statutes of 1919, Section 1178.*

No corporation may declare and pay dividends, except from the surplus or net profits arising from its business, or when its debts, whether due or not, exceed two-thirds of its assets, nor may it reduce, divide, withdraw, or in any way pay to any stockholder

any part of its capital stock except according to this chapter. In case of a violation of any provision of this section, the directors under whose administration the same occurs are jointly and severally liable, at any time within six years after paying such dividend, to the corporation and its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend paid, or capital stock reduced, divided, withdrawn, or paid out, with interest on the same from the time such liability accrued. Any director who was absent when the violation occurred, or who dissented from the act or resolution by which it was effected, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors at the time the action was taken or immediately after he has had notice of it. *Consolidated Statutes of 1919, Section 1179.*

The statute is peculiar in that it renders it obligatory upon directors to pay as dividends all accumulated profits except such as are specifically reserved as working capital.

Ohio:

No corporation shall pay dividends

(1) in cash or property, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, plus stated capital, after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(2) in shares of the corporation, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, plus stated capital.

In computing the aggregate of the assets of the corporation, the directors shall determine and make proper allowance for depreciation and depletion sustained and losses of every character. Deferred assets and prepaid expenses, excepting organization expense and financing charges, shall be written off at least annually in proportion to their use as may be determined by the board of directors. Organization expense and financing charges may be written off in the discretion of the board of directors.

Cash dividends shall not be paid out of surplus due to or arising from (*a*) unrealized appreciation in value of or a revaluation of fixed assets, or (*b*) any profit on treasury shares before resale, or (*c*) any unrealized profits due to increase in valuation of inventories before sale, or (*d*) the unaccrued portion of unrealized profits on notes, bonds, or obligations for the payment of money purchased or acquired at a discount, unless such notes,

bonds or obligations are readily marketable, in which case they may be taken at their actual market value, or (*e*) the unaccrued or unearned portion of any unrealized profit in any form whatsoever, whether in the form of notes, bonds, obligations for the payment of money, installment sales, credits, or otherwise.

When the directors so determine, dividends may be paid in shares at the par value thereof, or, in case of shares without par value, at a value fixed by the board of directors, provided that no dividend payable in the shares of any class shall be paid to shareholders of another class unless the articles otherwise provide or such payment is authorized by the affirmative vote of the holders of a majority of the shares of the class in which payment is to be made.

Amounts of surplus arising from an unrealized appreciation of or a revaluation of fixed assets shall be shown on the books of a corporation separate from surplus profits and capital surplus or paid-in surplus.

The excess of consideration paid in by shareholders for shares having par value over the par value thereof, or for shares having no par value over the amount allotted to stated capital with respect thereto, shall be shown on the books of the corporation as a separate item designated "paid-in surplus" or "capital surplus." In case all or any part of any cash dividend is paid out of such paid-in or capital surplus, the stockholders shall, at the time of payment, be notified of that fact.

No distribution of capital shall be designated as or made to appear to be a dividend.

A corporation which owns or is to own wasting assets intended for sale in the ordinary course of business, such as coal or ore mines or oil or gas wells, or a corporation which is to hold property having a limited life, such as a lease for a term of years, or patents, may include in its articles a provision that the depletion of such assets by sale or lapse of time need not be deducted in the computation of surplus available for dividends, and a corporation which so provides in its articles may pay dividends without deduction of such depletion, subject, however, to the rights of shareholders of different classes.

No dividend shall be paid to the holders of any class of shares in violation of the rights of the holders of any class of shares. *General Corporation Act of 1927, Section 8623-38.*

The directors of a corporation shall not pay dividends or withdraw or distribute any part of its stated capital except as provided in this act.

In case of any wilful or negligent violations of the provisions

of this section the directors under whose administration the same shall have happened, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the time or who were not present when such action was taken, shall be jointly and severally liable to the corporation at any time within two years after each such violation for the full amount of any loss sustained by such corporation by reason of any such dividend, withdrawal or distribution.

A director shall not be held to have been negligent within the meaning of this section, if he relied and acted in good faith upon a balance sheet and profit and loss statement of the corporation and a statement of the computation of the surplus available for dividends represented to him to be correct by the officer of the corporation having charge of or supervision over its accounts, or certified to be correct by a public accountant or firm of public accountants of good reputation and if he caused such balance sheet and statements to be entered on the books of account or record of the corporation. *General Corporation Law of 1927, Section 8623-124.*

Washington:

It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this chapter, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual or private capacity, be jointly or severally liable to the corporation, and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: Provided, that this section shall not be construed to prevent division and distribution of the capital stock of the company, which shall remain after the payment of all of its debts upon the dissolution of the corporation or the expiration of its charter: Provided, further, That in the case of corporations whose stock is wholly or partly without any nominal or par value, the provisions of this section shall not apply to so much of the capital stock as is represented by such non-par value stock, except in the amount of the designated "Initial Non-Par

Capital." The rights of creditors shall not be limited by the provisions of this section. *Pierce's Code of 1919, Section 4524, as amended by Laws of 1923, Chapter 168, Section 2.*

The Washington statute authorizing formation of corporations having non-par value stock requires that the articles state the amount of capital with which a corporation begins business. This is its "Initial Non-Par Capital."

No dividends shall be paid to any stockholder of any corporation until at least fifty percentum of the authorized capital stock has been fully paid in, and no dividend shall thereafter be declared or paid by the directors of any corporation except out of net profits properly applicable thereto and which shall not in any way impair or diminish the capital; and if any such shall be paid every stockholder receiving the same shall be liable to restore the full amount thereof unless the capital be subsequently made good; and if the directors of any corporation shall pay any such dividend before the said portion of such capital stock is fully paid in, when the corporation is insolvent or in danger of insolvency, not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividend to the amount of their claims, provided that any corporation which has invested or may invest its net earnings or income or any part thereof in permanent additions to its property or whose property shall have increased in value, may lawfully declare a dividend payable to stockholders upon its capital either in money or in stock to the extent of the net earnings or income so invested or of the said increase in the value of its property; but the total amount of such dividend shall not exceed the actual cash value of the assets owned by the corporation in excess of its total liabilities, including its capital stock. *Statutes of 1923, Section 182.19, as amended by Laws of 1925, Chapter 398.*

The amount of all moneys and the money value of any services or property paid for shares without par value as fixed at the time of the issuance of the shares therefor by the organizers, the directors, or the stockholders, whichever shall have fixed the price for the issuance thereof, shall constitute the capital applicable to such shares, which capital may not be diminished by the payment of dividends. In case, however, of the issuance of such shares in exchange for the shares of an existing business then having a surplus such surplus may be retained as a surplus available for

the payment of dividends or in case said shares without par value are sold by a corporation which has accumulated a surplus, such portion of the price as shall bear the same proportion to the total price as the surplus bears to the total capital and surplus of the corporation, may by resolution of the board of directors adopted prior to the sale of such stock be treated as surplus available for dividends. In the event of the payment of a stock dividend in stock without par value, the resolution providing for such dividend shall specify the amount of the surplus distributed by such dividend and such amount shall become capital. *Statutes of 1923, Section 182.14, Sub-section I, as amended by laws of 1927, Chapter 415.*

Consideration of the foregoing extracts from the laws of various states makes evident the necessity of as rigid observation of the distinction between capital and surplus where non par value stock is employed as where par value stock is employed.

In some respects the question of dividends is the same for par value as for non par value stock; nevertheless the disappearance of the par value feature from the stock of many concerns, the introduction of the concept of stated capital with features not formerly known, and the consequent effect on the problems of capital preservation and distribution of surplus, have given rise to certain problems.

As to the distribution of dividends from surplus resulting from appreciation of fixed assets, the consensus of opinion as represented by court decisions and the opinions of lawyers and accountants is to the effect that such surplus does not represent realized profit, hence should not be made the basis of dividends.

When, however, appreciation of capital assets results in the wiping out of a deficit arising from past operating losses it seems to be the majority opinion that dividends may be paid out of profits without waiting until sufficient profits from operations have been accumulated to again wipe out such deficit.

The introduction of capital stock having a stated value and which is sold at a figure greatly in excess of such stated value raises the question, whether such excess may be made

to serve as the basis for dividend distributions. In some respects such excess is analogous to a premium received on the sale of par value stock, yet the differences surrounding the two transactions may be so great as to render the analogy meaningless or even harmful to the reaching of correct conclusions.

The statutes of many of the states are ambiguous and in some instances practically meaningless on this point. Wildman suggests that the Illinois law is unusually specific in this regard, it being to the effect that ". . . the capital of the corporation shall be considered as the aggregate amount paid in on its shares of capital stock issued and outstanding." It furthermore renders the directors liable for impairing such capital by declaring dividends from it.

It is generally agreed that a stock dividend may be declared from any kind of surplus, but whereas a stock dividend of par value stock necessarily diminishes surplus by the amount of par value of the stock issued in payment of such a dividend, a dividend paid in non par value stock does not affect the surplus account at all. It may even be possible to declare a stock dividend of non par value stock when no surplus exists. If a surplus is available for cash dividends it may be a preferable plan to keep it intact instead of transferring it to the capital account when a non par stock dividend is declared on outstanding non par stock, thus retaining it in form available for payment of cash dividends.

One of the principal motives for the declaration of a stock dividend is the desire to lower the market value of all outstanding shares, thus making them available to a wider range of investors. A 100% stock dividend should reduce the market value of each share to one-half that of the shares outstanding before it is made.

26. Treatment of Surplus

The usual definition of surplus is excess of assets over liabilities and capital. This excess is derived from various sources and the source of derivation may be a factor in de-

termining what may be done with it. It may be derived from the sale of merchandise at a profit or from the writing up of fixed assets as the result of a revaluation. Profits derived from operations are usually represented by cash or receivables of some kind; but surplus arising from revaluations is in a real sense unrealized and not reducible to cash or receivables unless the assets are sold, which is not usually contemplated. Under such conditions to distribute the surplus might seriously deplete cash.

The statutes of most states contain a provision to the effect that dividends shall be paid only from surplus or accumulated net profits, the apparent intention being to authorize the payment of dividends from surplus arising from profits but not from surplus arising from revaluations. It is evident that surplus arising from a revaluation is more closely akin to the stockholders' investment than to profits and that therefore its distribution as a dividend might be questionable treatment.

At the time of organization the capital stock of an enterprise reflects proprietorship, but operations soon alter the situation, presumably by adding an increment to proprietorship in the form of earned surplus. The sum of original capital plus surplus is sometimes termed owned capital. The statutes of most of the states attempt to protect the original investment by prohibiting the distribution of dividends from capital. Good accounting procedure always distinguishes between the original investment and accretions thereto either from profits or from revaluations, also between surplus arising from earnings and that arising from appreciation of capital assets.

To illustrate, assume that a company sells its 100,000 shares of non par value stock for $5,600,000, its balance sheet at time of commencing operations standing as follows:

Assets		Liabilities and Capital	
Cash	$3,000,000	Capital Stock	$5,600,000
Plant	2,600,000		
	$5,600,000		$5,600,000

During the first year a net profit of $300,000 is realized, the balance sheet becoming:

Assets		Liabilities and Capital	
Cash	$1,300,000	Capital Stock	$5,600,000
Receivables	2,000,000	Surplus from Operations	300,000
Plant	2,600,000		
	$5,900,000		$5,900,000

During the second year a net profit of $400,000 is realized, and a revaluation of plant adds $1,000,000 to its book value, the balance sheet then becoming:

Assets		Liabilities and Capital	
Cash	$1,200,000	Capital Stock	$5,600,000
Receivables	2,500,000	Surplus:	
Plant	3,600,000	From Operations	700,000
		From Revaluation	1,000,000
	$7,300,000		$7,300,000

Unfortunately the statutes do not usually require such accurate distinction to be made between the parts constituting proprietorship, and under some of them it is possible for this company to show its proprietorship as a single item, namely, $7,300,000. Where this procedure is followed it offers an opportunity for the concealment of current deficits, whereas greater regard for the truth requires the setting out of the loss as follows:

Capital Stock	$400,000
Less Deficit from Operations	60,000
Net Capital	$340,000

Sometimes "stated capital" is confused with actual capital and any sum received for shares in excess of their stated value is credited to surplus. Whatever "stated capital" may be it should not be allowed thus to interfere with the application of correct accounting principles.

Among the ways in which surplus may be created other than from profits are:

1. Revaluation of physical assets
2. Writing up of securities owned
3. Valuation of patents above cost

A reading of the statutory requirements reproduced in the

preceding pages shows that they are not always clear as to what is meant by surplus. Thus the Florida law states that "dividends may be paid to stockholders from a corporation's net earnings or from the surplus of its assets over its liabilities including capital, but not otherwise." If in capital is to be included all surplus other than that arising from profits from operations, this requirement is correct, but otherwise may be regarded as authorizing the distribution of surplus derived from sources other than profits, e.g., capital surplus. In California a corporation cannot "declare or pay any dividend which shall reduce the amount of its stated capital." It is conceivable that this would not prevent the distribution of capital surplus. The examination of the statutes of other states will disclose other opportunities for the distribution of capital surplus as dividends. However, in the California law relating to business corporations generally it is provided that unless they shall have been first permitted or authorized to do so by the commissioner of corporations, "directors of corporations must not make dividends except from the surplus profits arising from the business thereof."

In Pennsylvania, "all corporations may declare dividends of so much of their net profits as shall appear advisable."

In Missouri, "dividends of the profits made by the corporation may be declared by the trustees or directors," and in case of non par stock corporations no corporation "shall declare or pay any dividend out of capital or out of anything except net profits or surplus earnings."

These are illustrative of the carefully worded statutes.

Apropos of the foregoing it may be noted that the capital stock of Wm. Wrigley, Jr. Company, as at December 31, 1927, consisted of 1,800,000 shares given a nominal valuation of $15,000,000 on the balance sheet; that earned surplus was shown at $20,719,000 and capital surplus at $1,900,000.

27. Subscriptions

Procedure for handling subscriptions to non par value stock does not differ essentially from that where par value

stock is involved. In either case subscription agreements may be entered on the general books as soon as accepted by the corporation, or they may be carried in memorandum form until the first instalment thereon is due and paid or payable.

If entered on the general books at time of acceptance the entry is:

Subscriptions .....
  To Capital Stock Subscribed .....

Upon receipt of the first instalment the entry is:

Cash .....
  To Subscriptions .....

When the last instalment is paid the entry is:

Capital Stock Subscribed .....
  To Capital Stock .....

If subscriptions are kept in memorandum form no entry is made in the general books until the first instalment thereon is received, when the entry is:

Cash .....
  To Subscriptions .....

When all instalments have been paid the following entry is in order:

Capital Stock Subscribed .....
  To Subscriptions .....

In such cases the memorandum record of individual subscriptions should contain all details essential to the accurate handling thereof.

Of course, the amount for which subscribers are charged per share in case of non par value shares must be determined by such methods as may be prescribed in the statutes or in the articles of incorporation.

28. Unissued Capital Stock

The total authorized issue of stock having par value is sometimes brought on the books by a formal entry, as follows:

Unissued Capital Stock .....
  To Capital Stock Authorized .....

the amounts extended representing the product of the par value of a share multiplied by the total number of shares authorized. In case of non par value stock this plan is impracticable. The tendency is to omit the formal entry for the amount of stock authorized; although it may be made by extending the number of shares instead of the total par value thereof.

29. Donated Stock

The creation of non par value shares has removed the chief reason for donated stock, viz., the avoidance of the liability feature of shares of par value by issuing them for property and having a part of such shares donated to the treasury in order to sell them at whatever price might be obtained.

30. Treasury Stock

Treasury stock is sometimes confused with unissued stock, but it is now quite well understood that treasury stock is that which has been issued and reacquired by the company. The treatment of treasury stock on the balance sheet necessarily depends on what theory is held relative to the effect which the acquisition by the company of its own stock has on the company's financial status. It appears that such acquisition amounts to a reduction of the company's capital; nevertheless it is customary to find treasury stock carried as an asset instead of being deducted from capital stock on the liability side of the balance sheet.

State laws customarily permit corporations to reacquire their own stock; neither do they require the cancellation of such reacquired stock. It is questionable, however, whether, in case of corporations having par value stock as well as in case of those having non par value stock, the reacquisition of stock may not reduce the capital of the company below that which the law contemplates shall be retained as a protection to creditors. That treasury stock is not an asset, but

merely the means of acquiring an asset through its sale, is evident.

With the above limitations in mind, there undoubtedly arise situations where excessive capital may be reduced by buying up the company's own stock, thus at the same time reducing dividend requirements.

31. Classes of Non Par Shares

The simplest capital structure consists of a single class of shares. Frequently, however, there are found two or more classes of shares of stock, such complication being presumably advantageous to the acquisition of capital. Classes of shares may be differentiated as to voting rights, dividends, and preferences as to assets in event of liquidation. All differences that do exist among classes or groups of stockholders must be specified, for unless they are so specified they do not exist and all shares are the same as to privileges and as to preferences. In other words, the stock is all common and consists of only one class unless otherwise stipulated in the charter.

Since the advent of non par value shares it is not uncommon to find a company issuing two classes of common stock under some such designations as Class A and Class B, the distinction between the classes taking the form of deprivation of the right to vote as regards one class, or of some other stipulated distinction. Sometimes one group of common stock is given prior rights in liquidation, as say, $25 per share before the other group receives anything.

As to the importance of the voting power, it is the custom in this country to place the control of stockholders' meetings in the hands of a relatively few persons by means of proxies mailed to the secretary of the company a short time before the day set for the stockholders' meeting. This has been termed "pyramiding of control." The significance of this tendency was discussed by G. T. Buckingham in an address reported in the *Chicago Journal of Commerce*, February 17, 1928. He said, in part:

I also affirm that in principle it is not of the slightest consequence whether all of the stock of a great holding company in the hands of public votes or not. The result is exactly the same. Swift and Company, for example, a great corporation in the utility field, has only one class of stock and all of it votes. The Swift family has managed the corporation for many years. They hold only a minor fraction of that stock. The stockholders, without exception, and practically unanimously, send their proxies to the managing people in favor of retaining the management in its place.

Ilinois Power and Light Corporation—another illustration—has outstanding approximately $40,000,000 of preferred stock. Every share has a vote and there are 45,000 voters to vote it. In practice, two-thirds of them send their proxies to the office to be voted by the management and the rest say nothing at all. The result is exactly the same as if Mr. Studebaker and those associated with him in the management, owned and voted every share.

Sometimes priority as to dividends is the distinction between two classes of stock, such priority in effect making the group of stock to which it attaches a preference group whether it is so termed or not. Where such preference exists but is not expressed in the name of the stock it should be brought in as a footnote to the balance sheet or as a parenthetical expression in the statement of the capital stock. Similarly any other priority should be shown. A set up of the capital stock in the balance sheet might be as follows:

Common stock without par value:	
Class A (10,000 shares having cumulative dividend rights of $3.00 per share in priority to the Class B stock)	$100,000
Class B (10,000 shares)	75,000
	$175,000

The foregoing shows that one class of common shares of non par value stock may in effect be preferred stock. Sometimes non par value stock is issued as preference stock, either as an entirely separate issue to be marketed on its own merits or as an issue to be marketed in conjunction with the sale of an issue of common stock. Not infrequently the common stock is issued as a bonus to the buyer of a given number of

preferred shares. In such event nothing is received for the common stock; consequently the set up of the capital account should be somewhat as follows:

Capital Stock:
Preferred (Issued 100,000 shares, entitled to a cumulative dividend of $4.00 per share before any dividend is paid on the common stock, thereafter both common and preferred stock to share equally in dividends).....$4,000,000
Common (Issued 25,000 shares)..... .....

The equity of the common stock at the time stock is sold is zero, but if later on a surplus is accumulated the common stock takes on a value accordingly. In such event the above display should be altered in such manner as to show the common stockholders' equity.

In the above illustration the common stock is given as a bonus and it is assumed that the payment is for the preferred stock exclusively. It is conceivable that this might not always be the case and that something is received for the common stock. In such case an allocation of the total amount received should be made on some reasonable basis—perhaps the market or exchange values of the two classes of shares.

The chief problem arising in connection with non-par value preferred stock is the treatment thereof in case of dissolution. When par value preferred stock is given a preference as to assets, the preferred stockholders receive distribution dividends to the extent of the par value of their stock before the common stockholders receive anything. Of course, if nothing is said as to preferences in liquidation, both classes of stock are on the same footing, but with the adoption of non-par preferred stock the tendency has been to abandon the feature of a preference as to assets. Now, however, to lend attractiveness to such issues they are frequently given a redemption value somewhat in excess of their original selling price and in addition may be given a preference in liquidation equal to such redemption value.

Where such is the case, it is preferable to show the preferred stock at its original selling price on the balance sheet, rather than to attempt to set it up at its redemption or liquidating value. In case of the redemption of preferred stock the excess of the redemption value over the price realized for such stock at time of issuance should be charged to surplus.

Where the dividend on preferred stock is cumulative the question arises as to what if any recognition of accumulated but as yet undeclared dividends should be given in the balance sheet. Probably the best practice is to append a footnote to the balance sheet stating the amount of such preferred dividends in arrears.

32. Voting Privileges

Although there is no reason for regarding the question of voting and non-voting stock as inherent in the problem of non par value stock, some instances have recently arisen where, in connection with non par value stock issues, one relatively small group has retained the voting right to the exclusion of the great body of stockholders. As to the importance of the voting right to the average stockholder opinions differ. One view is expressed in the address of G. T. Buckingham, quoted in part on page 486. Non-voting stockholders may have access to the courts if they feel that their rights are being trampled on, but such steps are usually taken only as a final recourse. Sometimes non-voting stock becomes voting stock in case the dividend thereon is passed.

33. Changing to Non Par Value Shares

In case of companies organized under laws granting issues of par value stock the question is likely to arise as to the advisability of changing to non par value stock in accordance with the requirements of the statutes of the state of incorporation. Of course, such change should not be made without weighing the benefits to be secured thereby against

any possible disadvantages or complications. There is no doubt that non par value stock is more flexible and more adaptable to the changing economic conditions that affect the market for stocks. The management is not faced with the problem of satisfying the requirements of the law as to full payment as is the case with par value stock. John R. Wildman lists the advantages of changing from par to non-par value stock as follows:

1. Gives greater flexibility to the shares
2. Permits wider and easier distribution
3. Permits a lower market price
4. Reduces the dividend distribution per share
5. Provides a bonus to accompany preferred shares
6. Dispenses with a deficit
7. Facilitates writing down of intangibles
8. Makes way for future financing through stock issues
9. Avoids the necessity of capitalizing or deferring financial charges
10. Prepares for conversion of debentures or preferred stock issues
11. Sometimes has a psychological effect

Below are reproduced extracts from the laws of three states relative to changing from par value stock to non par value stock.

Connecticut

Any such corporation may change any of its stock, common or preferred, having a par value to an equal, greater or less number of shares of stock having no par value and, in connection therewith, may fix the amount of capital stock represented by such shares of stock without par value, and any such corporation may reduce its capital stock by reducing the number of shares of its stock, whether the same have par value or no par value, or by reducing the par value of shares which have a par value, or by reducing the amount of capital stock represented by shares with no par value, or by any and all of such methods; but, except as provided in section 3430 [*relating to retirement of preferred stock*] of the general statutes, no such corporate action shall be valid unless approved by a vote of two-thirds of all outstanding stock of each class at a meeting of stockholders warned and held for that purpose nor unless a majority of the directors shall make,

sign and swear to and file in the office of the secretary of the state a certificate stating that such corporate action has been duly approved by the stockholders and setting forth a copy of the vote of the stockholders, which vote shall show the details as to such corporate action, and, in case any distribution or other disposition of assets shall be involved in such corporate action, stating that the names of the stockholders voting in favor thereof appear upon the corporate records. The secretary of the state shall record such certificate in a book to be kept by him for that purpose. In case any distribution or other disposition of the assets of the corporation involved in or resulting from such corporate action shall render the corporation insolvent, the stockholders voting in favor thereof shall be jointly and severally liable, to the amount so distributed or disposed of, for all debts of the corporation existing at the time of such vote, after judgment shall have been obtained against such corporation and execution shall have returned unsatisfied. The records of the corporation shall show the name of every stockholder voting in favor of such distribution or disposition of assets. *Public Acts of 1923, Ch. 168, Sec. 2.*

This statute grants full power to corporations to change from par to non par value stocks and prescribes the procedure necessary to make such change. Provision is also made for a reduction of the capital stock, whether par or non par value. The essential steps in such procedure are to secure a two-thirds vote of all outstanding stock of each class and a certification by the board of directors to the secretary of state of such action.

Florida

Any corporation having capital stock may from time to time when and as desired amend its certificate of incorporation in any respect, provided that only such provisions shall be inserted by amendment as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment. A corporation may by amendment change the number of its shares of stock outstanding at the time of such amendment or the number of shares so outstanding in any class of its stock, exchange the par value of the outstanding shares of any class having par value or change the outstanding shares of a class having par value into the same or a different number of

shares without par value, upon such basis as may be set forth in the certificate of amendment; but the capital of a corporation shall not be decreased except in the manner provided in section 22 hereof. *Corp. Law of 1925, Sec. 5.*

North Carolina

Any such corporation heretofore organized, whether under a special act of legislature or otherwise, having outstanding shares either with or without nominal or par value, may amend its certificate of incorporation, articles of association or charter, as follows:

(*a*) So as to change its shares with nominal or par value or any class thereof into an equal number of shares without nominal or par value; or

(*b*) So as to provide for the exchange of its shares with nominal or par value, or any class thereof, for an equal or different number of shares without nominal or par value; but all outstanding shares in any class shall be exchanged on the same basis; or

(*c*) So as to provide for the exchange of its shares without nominal or par value, or any class thereof, for a different number of shares without nominal or par value; but all outstanding shares in any class shall be exchanged on the same basis;

Provided, however, the preferences on liquidation, redemption price, dividend rate and like preferences or limitations lawfully granted or imposed with respect to any class of outstanding stock so changed or exchanged under the provisions hereof, shall not be impaired, diminished or changed as to any non-assenting holders thereof. Such preferences, rights and limitations, however, may be expressed in dollars, or in cents, per share rather than by reference to par value. Whenever such a corporation has heretofore issued shares without nominal or par value, in exchange for an equal or different number of shares with par value, such exchange and the issue of an equal or different number of shares without nominal or par value in consummation of such exchange, be and the same are hereby validated, ratified and confirmed. *Laws of 1921, Ch. 116, Sec. 4, as amended by Laws of 1925, Ch. 262.*

This provision requires that the interests of the various classes of stockholders be protected by stating that their preferences as to assets in liquidation, redemption, dividends, etc., be preserved, in the newly issued stock. The law contains a retroactive provision ratifying such changes in capi-

talization already made. Even though the law does not specify that the interests of the various classes of stockholders be not molested it is a fair inference that they could not be. It is conceivable, however, that in changing from par to non par value stock the most careful attention given to the interests of the different groups of stockholders might not result in leaving them in the same situation as before as regards their advantages and disadvantages.

No difficulties should arise in changing from par value to non par value shares so far as accounting procedure is concerned. Ordinarily the amount shown in the capital stock account should not be changed, neither should the surplus account be altered. The number of shares of non par value stock may be either greater or less than the number of shares of par value stock which they supplant, but the equity represented by them is the same. Moreover, the status of the surplus is in no way altered and the best judgment thereon is to the effect that it should continue to be segregated in the same manner as before the change in stock is effected. This plan has not always been followed, but where surplus has been merged into the capital stock account such procedure has created difficulties such, for example, as the question of dividend payment out of surplus thus capitalized.

If it is desired to make a formal journal entry at the time the change is made from par to non par value stock this may be done as follows:

Capital Stock (par value) .....
To Capital Stock (non par value) .....

To record change from par to non par stock, the capital stock retired consisting of..... shares of a par value of ..... dollars each, and the non par value stock issued consisting of..... shares.

In case the non par value stock is given a stated value which is to be reflected in the capital account, and such stated value is less than the par value of the outstanding par value stock, a capital surplus is arbitrarily created, measured by the excess of such par value of the old stock over the

stated value of the new stock. In this case some such entry as the following is in order:

Capital Stock (par value)	$200,000	
To Capital Stock (non par value)		$150,000
Capital Surplus		50,000

To record change from par to non par stock, the capital stock retired consisting of..... shares of a par value of..... dollars each, and the non par value stock issued consisting of ..... shares, having a stated value of $150,000.

34. Miscellaneous Statutory Regulations

Non par value stock exists only because laws have been enacted permitting corporations to issue it. The provisions of state laws regarding non par value stock differ widely. It is impossible to describe all these provisions or explain their differences here, but some important features and variations may be noted and the decisions of some courts cited.

The subject of dividends is considered elsewhere. The non par stock law may contain no provisions relative to dividends, in which case the provisions of general laws probably apply.

As to surplus, changing from par value to non par value stock, does not ordinarily require its capitalization, although specific conditions may modify this rule. Also a corporation may ordinarily wipe out an existing deficit when changing to the non par stock plan, but the provisions of the state laws should first be consulted for any possible bearing they may have on this point. Where there are certain legal requirements it is possible that a corporation may create a surplus where none existed before change to non par value shares.

Where it is necessary to place a value on shares for purposes of taxation, establishing limitations on indebtedness and of capital stock, and so on, various procedures are

prescribed. Stated capital is prescribed for certain purposes in California. In other states the provisions vary. Sometimes an arbitrary value is prescribed. Sometimes the consideration received for the stock is the amount taken for this purpose.

In general, the state statutes require that the amount to be capitalized shall be the amount actually received in payment therefor, but there are exceptions to this rule, and in any event the provisions of the laws are so various that generalization is dangerous. In New York the stated capital may be capitalized, but the incorporators have the option of selecting a stated amount per share, not less than $1, as the basis of capitalization.

Requirements vary as to what consideration may be received in exchange for non par value stock. It is customary to leave it to the charter to prescribe this, or else to the action of the stockholders or board of directors. The directors in some cases act on authority conferred by the charter, sometimes on authority conferred by the stockholders. In any event the laws of the state in question must be consulted and their provisions scrupulously followed.

It appears that, in the absence of statutory provision to the contrary, shares of the same issue may be sold at varying prices. *Hodgman* v. *Atlantic Refining Co.*, Fed. 781. *Bodell* v. *Gen'l. Gas & Electric Corp.*, 132 Atl. 442.

As to the feasibility of issuing non par value stock as a bonus, the answer is negative. The provision of some statutes, by their express wording, prevents it; but even in the absence of such express provision the tenor of the general corporation laws and of the state constitutions will usually be such as to prohibit the issuance of stock of any kind without consideration. The decisions of the courts substantiate this view. *Stone* v. *Young*, 210 N. Y. App. 303.

As to the stockholder's liability, the purchase price agreed upon in the subscription contract is its measure, and a provision frequently found is to the effect that stock for

which the agreed upon price has been paid shall be regarded as full paid and non-assessable.

In most of the states having non par value stock legislation preferred stock of non par value may be issued.

It is now well established that a corporation having non par value stock may engage in business in a state not authorizing such stock. *No. Am. Pet. Co.* v. *Hopkins,* 105 Kan. 161.

It is also well established that it is constitutional to issue non par value stock in retirement of stock having a par value. *Randle* v. *Winona Coal Co.,* 89 So. 790. In a few states, however, the specific statutory provisions may prevent it.

As a rule, financial corporations—banks, trust companies, building and loan associations and insurance companies—are excluded from those which may issue non par value stock. In some instances public utilities are excluded.

As to taxation of non par value shares the rule is either to levy the tax at so many cents per share, or to apply a rate on an arbitrary value per share. To these plans there are some exceptions. In some instances the capital stock tax is a matter of sufficient importance to warrant consideration of various states for purposes of incorporation. Thus if a large number of shares is to be issued at a low price per share a state which taxes on the basis of number of shares authorized might be undesirable.

35. Non Par Value Stock Issues Illustrated

Intercontinental Rubber Company. Authorized 604,000 shares, no par value; outstanding December 31, 1926, 594,378 shares. In addition there remained to be issued to complete exchanges under the reorganization plan, 1,626 shares. Authorized capital increased from 60,400 shares, no par value (31,370 shares outstanding) in 1926 and 10 shares of new stock issued in exchange for each old share held. In addition, 56,520 shares new stock were issued for conversion of Convertible Collateral Trust Notes, redeemed April 1,

1926 (on basis of 10 shares stock for each $100 face amount of Notes) and 225,960 shares sold to note holders at $10 per share pursuant to subscription rights of notes called.

The New York Air Brake Company. Authorized and outstanding, 300,000 shares Common of no par value. Stockholders voted September 15, 1922, to change the authorized capitalization from 130,000 shares of $100 par value to 300,000 shares Common and 100,000 shares Class "A" stock, both classes of no par value, and to exchange the 100,000 outstanding shares of $100 par value for 200,000 shares Common of no par value on the basis of one share $100 par value for each two shares Common of no par value. On April 16, 1926, stockholders approved the plan for recapitalization of Company by the calling in of the Class "A" stock and the issuance of 100,000 shares of additional Common stock, making total stock capitalization 300,000 shares of Common stock.

Class "A" Stock Redemption—All of the Class "A" stock was redeemed on July 1, 1926, at $60 a share and dividend at Company's office, 165 Broadway, New York.

Safety Cable Company. Authorized 200,000 shares, no par value; outstanding, 163,002 shares. Increased from 7,500 shares, par $100, October 6, 1925.

American Steel Foundries. Authorized, 1,000,000 shares Common of no par value (changed from 750,000 shares, par $33 1/3 each to 1,000,000 shares of no par value in April, 1925, the exchange being made on the basis of five shares of the new for four shares of the old stock), and $25,000,000 7% cumulative Pfd.; outstanding 902,745 shares Common and $8,713,000 Pfd.; par of Pfd.; $100. Preferred stock was issued pursuant to a vote of stockholders at a special meeting held April 22, 1919. The outstanding Preferred stock was issued in exchange or payment for Common stock of the Griffin Wheel Co. and Damascus Brake Beam Co. Originally the authorized capital stock of company was $40,000,000, divided equally between Common and Pfd.

Preferred Stock Provisions—Of the Pfd. stock, $10,000,000 may be issued forthwith, but no additional amount may be issued unless net earnings of company applicable to Pfd. dividends for a period of 12 months ending not more than 90 days prior to such issuance shall have amounted to at least twice the annual dividend requirements on all Pfd. stock outstanding, including that proposed to be issued. Pfd. stock has preference for assets and dividends and in the event of dissolution or other liquidation of capital will be entitled to 110 and accrued dividends before any distribution can be made on the Common. Without consent of two-thirds in amount of Pfd. stock outstanding neither the corporation itself nor any company a majority of whose stock it owns shall (1) mortgage or create any lien upon its property except purchase money mortgages, or (2) increase the authorized amount of Pfd. stock. Pfd. stock is subject to redemption as a whole or in part at 110 and accrued dividends, on any dividend date after three years from date of issue on 30 days' notice. Annual sinking fund for the redemption of Pfd. is provided commencing December 31, 1920, consisting of an amount equal to not less than 1% of the maximum amount of Pfd. stock theretofore issued; this fund may be applied at the directors' discretion, and when it amounts to $100,000, must be applied to the purchase or redemption of Pfd. stock at not exceeding the redemption price. In case company shall be in arrears in the payment of four consecutive quarterly dividends on Pfd. stock or be six months in default after written notice by or on behalf of any Pfd. stockholder, with regard to any other provisions qualifying the issue of Pfd., the Pfd. stock will assume equal voting power with the Common and shall retain the same until all such arrearages have been remedied.

The Hartman Corporation. Authorized, 200,000 shares $2 Dividend Class A and 400,000 shares of Class B, both classes of no par value; outstanding, 18,124 shares Class A and 397,227 shares Class B.

Kennecott Copper Corporation. Authorized, 5,000,000

shares of no par value (increased from 3,000,000 shares April 9, 1923); outstanding 4,498,418 shares. Stated capital $25,000,000. Stock is full-paid and non-assessable.

36. States Permitting Issuance of Non Par Stock

The following information relative to states permitting issuance of shares of stock without nominal or par value, including rates of taxation, and consideration for which such shares may be issued is published through the courtesy of the Registrar and Transfer Company, 7 Dey St., New York City.

List of States permitting the issuance of *shares of stock without nominal or par value*, including rates of taxation, and considerations for which said shares may be issued.

State	*Classes of non par shares authorized by statute*	*Rate or basis of taxation*	*Consideration for which non par shares may be issued*
Alabama	Preferred and Common.	Same as $100. shares or actual value.	Cash; property; services; labor.
Arizona	Preferred and Common.	Flat rate regardless of number of shares. (See page 12).	Cash; property; labor done.
Arkansas	Preferred and Common.	On actual value fixed for issuance (to be not less than $25. each). Same rates as for par shares.	Cash; property; labor done.
California	Preferred (other than preferred as to principal) and Common.	Same as $10 shares.	Money paid; labor done; property actually received.
Colorado	Common.	Same as $1. shares.	Labor done; services performed; cash; property actually received.
Connecticut	Preferred and Common.	Same as $100. shares.	Cash or property.

State	*Classes of non par shares authorized by statute*	*Rate or basis of taxation*	*Consideration for which non par shares may be issued*
Delaware	Preferred and Common.	See page 2.	Money; services; property.
Florida	Preferred and Common.	20 cents per share on 1st 1250 — 5 cents per share exceeding 1250 up to 10,000 — ¼ of 1 cent on next 10,000 — 1/10 of 1 cent on balance.	Cash; property; labor or services.
Georgia	Preferred and Common.	Flat fees for filing.	Cash; property or services.
Idaho	Preferred and Common.	Same as $100. shares.	Labor done; services performed; cash; property actually received.
Illinois	Preferred and Common.	On actual value at same rates as for par shares.	Cash or property.
Indiana	Common only.	Same as $10 shares.	Cash; property or services.
Kansas	Preferred and Common.	Same as $100. shares or actual value.	Cash or property.
Kentucky	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Louisiana	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Maine	Preferred and Common.	Org. tax 1 cent per share; Fran. tax ½ cent per share.	Cash; property; services.
Maryland	Preferred and Common.	Same as $100. shares.	Cash; services; property.
Massachusetts	Preferred and Common.	5 cents per share.	Cash; property; services; expenses.
Michigan	Preferred and Common.	Same as $1. shares unless corporation issues at a higher price.	Cash; real or personal property.

State	*Classes of non par shares authorized by statute*	*Rate or basis of taxation*	*Consideration for which non par shares may be issued*
Minnesota	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Missouri	Preferred and Common.	Same as $100. shares.	Cash or property.
Nevada	Preferred and Common.	10 cents for each 1,000 shares or fraction.	Cash; property or services.
New Hampshire	Preferred and Common.	Same as $50. shares.	Cash; real or personal property; rights; franchises; services or expenses.
New Jersey	Preferred and Common.	Org. tax 1 cent per share; Fran. tax see page 6.	Money; property or labor.
New Mexico	Preferred and Common.	Same as $100. shares or on actual value if any fixed.	Cash; property or services.
New York	Preferred and Common.	5 cents per share.	Cash; property or labor done.
North Carolina	Preferred and Common.	Same as $100. shares.	Cash; property; services or expenses.
Ohio	Preferred and Common.	Org. tax at varying rates on per share basis — anl. tax on actual value of shares employed in state.	Cash or property.
Oregon	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Pennsylvania	Preferred and Common.	On actual value.	Cash or property.
Rhode Island	Preferred and Common.	Same as $100. shares.	Cash; services or property.
South Carolina	Preferred and Common.	Same as $100. shares or other proved value.	Cash; property or labor done.

State	*Classes of non par shares authorized by statute*	*Rate or basis of taxation*	*Consideration for which non par shares may be issued*
Tennessee	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Texas	Preferred and Common.	Upon actual consideration received, at same rates as for par stock.	Cash; property or services.
Utah	Preferred and Common.	Same as $100. shares.	Cash or property.
Vermont	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Virginia	Preferred and Common.	Same as $100. shares.	Cash; property or services.
Washington	Preferred and Common.	On value of assets as stated in affidavit of incorporators and at same rates for par shares.	Cash; property; labor or services.
West Virginia	Preferred and Common.	Same as $25. shares unless issued at a higher price.	Cash; services or property.
Wisconsin	Common only.	5 cents per share.	Money; labor or property.

XIV

ACCOUNTING FOR CAPITAL STOCK

1. Problems Involved

Capital stock is issued to secure funds or in payment for valuable assets of some description. Sometimes capital stock is donated to the company which issued it. Sometimes non par value stock is issued in exchange for par value stock. Sometimes preferred stock is authorized. Sometimes stock outstanding is retired. It is necessary to develop a procedure by means of which the various transactions affecting capital stock may be correctly reflected on the books and on the balance sheet. The accounting procedure relative to capital stock will be considered under the following heads:

1. Original issues
   - (*a*) Par value stock
   - (*b*) Non par value stock
   - (*c*) Preferred, Class "A," etc., stocks
2. Treasury stock
   - (*a*) Par value
   - (*b*) Non par value
   - (*c*) Donated stock
3. Retirement of stock
4. Stock of other companies

ORIGINAL ISSUES OF STOCK

2. Par Value Stock

Par value stock is that to which is assigned an arbitrary value which is supposed to represent the amount paid in at the time of its sale. In reality, the amount paid in is sometimes more and sometimes less than par. In some states the law permits the sale of par value stock at a discount; in not

a few instances it is sold at a premium; especially is the latter true in case of banks, where it is desirable to begin business with a permanent capital or paid in surplus. It is the invariable rule, however, that capital stock having a par value be shown at its par value on the balance sheet; hence the necessity of taking care of the premium or discount in a separate account.

The amount of capital stock which a company is permitted to issue by the terms of its charter is known as its "authorized" capital stock. Any issues in excess of the amount thus authorized are void. Authorized but unissued stock does not represent value; but it does represent the privilege granted by the state to sell stock, and to that extent the amount of stock authorized is a matter of real financial importance.

The first question arising relative to accounting procedure is as to the advisability of making a formal entry in the books of account for the amount of stock authorized. This is obviously unnecessary, if not impossible, in case of non par value stock because no value can be assigned to it until it is sold. It is simply desirable to express the facts where those interested can ascertain them. The charter invariably sets forth the number, classes, par value, etc., of all shares authorized. If copies of the charter are accessible to all interested parties that would appear to meet the requirements. A copy of the charter is customarily included in the minute book. However, if all readers of the balance sheets of companies which have thousands of stockholders are to be apprised of the facts, they must be set forth in the balance sheet itself, appended thereto in the form of a footnote, or otherwise set out in the annual report.

If we assume that a company incorporates with an authorized capital stock of 10,000 shares having a par value of $100 each, formal entry therefor may be made in the journal as follows:

Capital Stock Unissued	$1,000,000	
To Capital Stock Authorized		$1,000,000

For amount of stock authorized by the charter, viz., 10,000 shares of a par value of $100 each.

Not infrequently it is desirable to preface the opening entry with an introductory statement setting forth the history and purposes of the enterprise. Sometimes the business has existed as a partnership previously to incorporation. If so, a brief outline of its history may not be amiss. It is a question just what information of this type should be brought into the books of account in preference to incorporating it in the minute book.

It is now necessary to make entry of the subscriptions to the capital stock. Here the variations are so great that it is impossible to do more than give an illustration somewhat typical. Thus if in case of the company whose authorized capital stock is that shown above, all of it is subscribed to and paid for in cash at par, the entry is:

Cash		$1,000,000	
To Capital Stock Unissued			$1,000,000
For cash received in full payment of stock as follows:			
A. A. Jones	3,000 shares		
Joe Roe	3,000 shares		
Mary Doe	2,000 shares		
Richard Doe	2,000 shares		

Sometimes capital stock is paid for in part, or even wholly, with real estate, merchandise, equipment, or other forms of assets other than cash. Thus in the above illustration it may be assumed that A. A. Jones and Joe Roe contribute equally to the extent of $600,000 worth of land, buildings, and merchandise, in which case the entry is:

Land	$100,000	
Buildings	300,000	
Merchandise	200,000	
Cash	400,000	
To Capital Stock Unissued		$1,000,000
For payment in full of subscriptions		

3. Non Par Value Stock

In case of non par value capital stock no formal entry is required and the opening entry merely expresses the amount received for the stock. This may be more or less than $100 per share; in fact, may be any amount per share, unless a minimum or stated value is required. In Illinois both maximum and minimum limits are placed on the selling price of non par value stock, the law requiring that a corporation "may issue and sell its shares of stock having no par value from time to time for such consideration, not less than five nor more than one hundred dollars per share, as may be described in the certificate of incorporation or as from time to time may be fixed by the board of directors pursuant to authority conferred in such certificate."

4. Stock Authorized But Not Issued

In the preceding illustration the entire authorized issue of capital is disposed of at once. Frequently, the amount of stock authorized is made larger than needed for immediate requirements in order that future expansion may be financed without a charter amendment. When the stock authorized exceeds the stock issued, the amount of stock outstanding is expressed in the balance sheet by showing the authorized capital stock less the unissued capital stock, the difference being extended as stock outstanding. In case of non par value stock there is no way of expressing the value of the authorized stock, so that a formal entry for the total authorized stock cannot be made. The capital stock account in this case simply stands credited with whatever amount is received for the stock, but there is no objection to indicating the facts regarding the number of shares authorized and the number that are outstanding in a footnote to the balance sheet or in a note immediately below the words "Capital Stock" in the balance sheet. This gives the reader of the balance sheet adequate information for all purposes.

5. Two or More Classes of Stock

The issue of two or more kinds of capital stock involves no new accounting principles. Each issue must be treated separately on the books, distinct entries being made throughout. Also in the balance sheet the same separation must be maintained. Care should be employed in designating the various classes of stock, names being employed which in so far as possible are descriptive of the qualities of the stock which they designate. It is impossible, of course, to employ a title so long as to explain all qualities and restrictions of a given issue of stock. This must be left to the charter. Illustrative of a concern having outstanding different stocks is the following extracted from the balance sheets of the Commercial Solvents Corporation:

	1927	1926	1925	1924
Preferred Stock	$.....	$.....	$1,000,000	$1,000,000
Common Stock	4,370,543	4,370,452	1,968,473 1,415,114	2,067,271

A footnote applicable to the common stock reads as follows: "Represented by the following no par shares: in 1927 by 217,722 capital shares; in 1926 by 108,861 class B shares; in 1925 by 39,069 class A shares and 47,064 class B shares; in 1924 by 40,000 class A shares and 40,000 class B shares." This is fairly typical of the changes which occur from year to year in the capital stock outstanding of growing concerns. It is not infrequently the case that preferred stock is retired as soon as the financial position of a company permits.

6. Subsidiary Stock Records

The character of subsidiary stock records must depend on the size and distribution of the issue of capital stock. In case of closely held corporations no subsidiary records are required, whereas in case of issues having a wide distribution and which are being constantly traded in it is necessary to remove all details to subsidiary journals and ledgers, the Capital Stock account in the general ledger serving as a

control. Frequently some statutory requirement exists relative to the keeping of stock records. Thus the New York Stock Corporation Law, sec. 10, states that no transfer of stock is valid, except to render the transferee liable for the debts of the corporation to the extent provided for in the statutes, until entered in the kind of book prescribed by the statute, the entry showing from and to whom transferred. Where statutory requirements exist they must be observed even though the records specified could otherwise be dispensed with.

The transfer book performs the functions of a journal. Stock transfers are explained in detail elsewhere. The stock book or stock ledger is subsidiary to and controlled by the capital stock account. As many transfer books and stock ledgers should be kept as there are classes of capital stock outstanding.

Some small companies keep no stock transfer book, the stock certificate book being made to serve instead.

Postings are made to the stock ledger from either the transfer book or the stock certificate book. The handling of transfers has little accounting significance since the total amount of outstanding stock, hence the balance in the capital stock account, is not affected.

7. Subscription Accounts

Frequently stock is issued on subscription to be paid for in instalments. In this case Subscriptions account instead of Cash is charged. Thus if a company is organized with a capital stock of $200,000 an entry for the authorized issue is made as follows:

Capital Stock Unissued	$200,000	
To Authorized Capital Stock		$200,000

Then when $100,000 of this stock is subscribed the entry is as follows:

Subscriptions	$100,000	
To Capital Stock Subscribed		$100,000

For subscriptions to capital stock, at par, as follows:

S. T. Arthur	600 shares
J. D. Jones	200 "
S. S. Smith	200 "

As the instalments fall due and are paid, Cash account is charged and Subscriptions account is credited. Thus if the first instalment is 25% the entry is:

Cash	$25,000	
To Subscriptions		$25,000

Similar entries are made as succeeding instalments are paid, the final payment closing Subscriptions account. It is then in order to make the following entry:

Capital Stock Subscribed	$100,000	
To Capital Stock Unissued		$100,000

The reason for this entry is that capital stock cannot be issued until fully paid up; hence the credit to Capital Stock Subscribed account when Subscriptions account is charged. When, however, the subscribers have paid in full, certificates of capital stock are issued and it is in order to make the above entry. As a result, there are three accounts standing with open balances: Cash account, debited $100,000; Capital Stock Unissued account, debited $100,000; and Authorized Capital Stock account, credited $200,000. On the balance sheet the status of stock authorized and outstanding would be expressed as follows:

Capital Stock:		
Authorized	$200,000	
Less: Unissued	100,000	
Outstanding		$100,000

If there are many subscribers a subordinate ledger should be opened in which to record the individual subscriptions. This ledger is controlled by the Subscriptions account in the general ledger, and when all subscriptions are paid up both the Subscriptions controlling account and the individual

subscription accounts in the subscriptions ledger will be closed. When such a subordinate ledger is set up the books of original entry must be so constructed as to facilitate posting of details to the subordinate ledger and totals to the Subscriptions controlling account. For example, on the debit side of the cash book a special column headed "Subscriptions," or similar appropriate title, would make posting much easier than if entries for instalments paid on account of subscriptions were entered in the "General" or "Miscellaneous" column of the cash book. The conditions surrounding each case must be allowed to determine the detailed accounting procedure to be followed, but the necessity of an accurate accounting for all phases of stock issues cannot be overemphasized.

A subscriptions journal is desirable if the subscriptions are numerous. From it postings are made of subscriptions to the subscriptions ledger and the subscriptions controlling account in the general ledger. The subscriptions journal should have columns for date, name and address of subscriber, number of shares subscribed for, and amount to be paid therefor. The total of this amount column, at the end of the month, is posted to the debit side of subscriptions account and to the credit side of the Capital Stock Subscribed account in the general ledger. The details should be posted daily to the debit side of the subscription accounts of individuals in the subscription ledger.

When a plan is prearranged in accordance with which instalments fall due for all subscribers on specified dates, an instalment book may be employed, a separate sheet being used for each instalment. When this plan is followed an entry is made, on the day the instalment falls due, debiting Instalment No. 1, or whatever instalment may be falling due, and crediting Subscriptions account. In this case the instalment book may take the place of the subscriptions ledger, or the two may be used together, the controlling account for each instalment sheet being the Instalment No. 1 account, or the Instalment No. 2 account, etc., as the case

may be. Any unpaid instalments shown in the instalment book would be reflected by the controlling Instalment account in the general ledger. Here, too, the instalment journal and the cash book must be devised to facilitate posting to both controlling and subsidiary record accounts.

The instalment book should contain columns for subscribers' names and addresses, number of shares subscribed, amount of instalment currently due, amount paid in thereon, date paid, and folio in which to indicate page of cash book from which posting is made.

8. Instalments Illustrated

Assume that on January 1, 1928, the Acme Company is organized with an authorized capital stock of $500,000 all of which is subscribed as follows:

T. T. Olson	3,000 shares
S. Jones	1,000 "
C. Clive	1,000 "

The stock is payable 15% down and the balance in the following instalments: February 1, 20%; March 1, 20%; April 1, 45%.

The entries are as follows:

Capital Stock Unissued	$500,000	
To Capital Stock Authorized		$500,000
For Capital Stock Authorized		
Subscriptions	$500,000	
To Capital Stock Subscribed		$500,000
(Explanation and details)		
Cash	$75,000	
To Subscriptions		75,000
For Cash Payments by Subscribers		
Feb. 1.		
Instalment No. 1	$100,000	
To Subscriptions		$100,000
For instalment due Feb. 1, details as to subscribers being shown on Instalment Sheet No. 1.		

Instalment Sheet No. 1 appears as follows:

FORM 213

ACME COMPANY

INSTALMENT NO. 1, 20%, DUE FEBRUARY 1, 1927

Name of Subscriber	Stock Ledger Folio	Address	No. Shares Subscribed	Amount Due	Amount Paid	Cash Book Folio	Remarks
T. T. Olson		6 Oak St., Chicago, Ill.	3,000	60,000	60,000		
S. Jones		1200 Ridge Ave. Boston, Mass.	1,000	20,000	20,000		
C. Clive		16 E. 22d St., N. Y. City	1,000	20,000	------		Will pay Feb. 10

In the cash book the entry is:

Feb. 1.

Cash	$80,000	
To Instalment No. 1		$80,000

Feb. 10

Cash	$20,000	
To Instalment No. 1		$20,000

Similarly, for each instalment an entry is made charging Instalment No. . . . and crediting Subscriptions, the details are spread on the Instalment sheet, and as cash is received Cash account is charged and Instalment No. . . . is credited.

When the final instalment is paid the following entry is made:

Capital Stock Subscribed	$50,000	
To Capital Stock Unissued		$500,000

9. Procedure for Non Par Value Stock

The accounting procedure for non par value stock subscriptions is in every respect the same as for subscriptions to par value stock, except that there is no par value and the shares are marketed at whatever price the directors may designate, subject to any restrictions in the charter or statutes.

10. Stock Sales at Other Than Par Value

Since non par value stock may be sold at any price without incurring any consideration of premium or discount, the following discussion refers only to par value stock. A few states have enacted laws permitting the sale of stock at a discount. Regardless of statutes, stock is sometimes sold at a discount with the understanding that while in the hands of holders having knowledge thereof it is subject to call for the unpaid balance.

The nature of stock discount and stock premium has been the subject of long controversy, although more difficulty appears in attempting a logical disposition of discount than in treating premium. The difficulty in finding a satisfactory treatment for discount arises out of the inconsistency in having a par value greater than the value received in payment for the stock. In case of stock issued at a premium, the nature of the premium is practically the same as the stock itself, although it is credited to a premium on capital stock account which is a division of capital surplus. It would seem that the logical treatment would be to show discount on capital stock as a deduction from capital stock account, or from surplus. The latter procedure is likely to be impossible, however, because a company which is compelled to market its stock at a discount is not likely to possess a surplus.

The customary practice is to charge discount to a Discount on Stock account, later writing it off against Profit and Loss account or against Surplus account if a sufficient surplus has been accumulated to permit this procedure. If it is brought into the income statement as a profit and loss item it should be indicated as an extraordinary item not related to current operating expenses. Sometimes discount on stock is capitalized as a developmental cost, but this is one of the less conservative methods of treatment. Probably the best practice is to charge it off against surplus as rapidly as conditions permit.

To illustrate the accounting procedure for discount on stock, assume that the A B C Company sells 100 shares of stock having a par value of $100 per share at a discount of 10. The entry is:

Cash	$9,000	
Discount on Stock	1,000	
To Capital Stock Unissued		$10,000

If, at the end of the year, the condition of the surplus account permits, a part of the discount on stock may be written off, as follows:

Surplus	$100	
To Discount on Stock		$100

Similar entries will be made in the future until the discount account is closed out.

If, instead, the stock had been sold at a premium of 10, the entry would be:

Cash	$11,000	
To Capital Stock Unissued		$10,000
Premium on Stock		1,000

As stated above, premium on stock is in the nature of capital surplus. It is carried on the books preferably as a separate account, but in the balance sheet should be shown as a division of capital surplus.

Treasury Stock

The introduction of non par value stock has to a large extent rendered the institution of treasury stock obsolete. Where par value stock is still issued the status of the issuing company may be such that it cannot be sold in the first instance at its par value for cash, while the statutes prohibit its sale at a discount. In such instances some of the stock is usually issued in exchange for material assets—land, buildings, machinery, etc.—which are presumably given a conservative valuation equal to the par value of the stock issued in payment therefor. It is quite possible that such a conservative valuation upon property purchased through

stock issues would not place the company in a position where it could sell its stock at par for cash, not because it is not worth par, but because it is not sufficiently well seasoned to appeal to investors, or because of conditions in the money market. In such circumstances the individual or individuals who sell plant and equipment to the company for stock and who are likely to own the majority or even all of the stock, may, because of their inability to supply the concern with sufficient cash, be glad to donate a part of their holdings back to the company to be held as treasury stock and to be sold as soon as possible for the best obtainable price, even though such price be less than the par value of the stock. Once stock has been issued as full paid stock and returned to the treasury, it may be sold at any price obtainable. In this way cash funds may be obtained.

Sometimes treasury stock arises through purchase, the company going into the market and buying up its own stock.

Regardless of the manner in which the company comes into possession of its own stock, the best procedure is to carry it on the books of the concern at its par value. The reason for doing this is that in setting up a balance sheet it is desirable to deduct treasury stock from capital stock on the credit side of the balance sheet. This cannot be done if treasury stock is held at any figure other than its par value.

We have, therefore, to consider the entries to be made:

1. When treasury stock is purchased:
   (*a*) at par
   (*b*) below par
   (*c*) above par
2. When treasury stock is sold.
3. When treasury stock is donated.

11. Entries for Treasury Stock Purchased at Par

When treasury stock is purchased at par the entry is a charge to Treasury Stock account and a credit to Cash account for the par value of the stock. Thus if 100 shares

of $100 par value each are purchased at par the entry is:

Treasury Stock	$10,000	
To Cash		$10,000

If this stock is later sold at $110 a share the entry is:

Cash	$11,000	
To Treasury Stock		$10,000
Profit on Sale of Treasury Stock		1,000

If sold at $90 a share the entry is:

Cash	$9,000	
Loss on Sale of Treasury Stock	1,000	
To Treasury Stock		$10,000

12. Entries for Treasury Stock Purchased Below Par

If 100 shares of stock of $100 par value each are purchased at $90 per share the entry is:

Treasury Stock	$10,000	
To Cash		$9,000
Contingent Profit on Treasury Stock		1,000

If this is later sold at par, the entries are:

Cash	$10,000	
To Treasury Stock		$10,000

And:

Contingent Profit on Treasury Stock	$1,000	
To Profit on Sale of Treasury Stock		$1,000

The purpose of the last entry is to transfer the balance in the Contingent Profit on Treasury Stock account to the Profit on Sale of Treasury Stock account because the profit is now realized.

If, instead, the stock bought at $90 per share is sold at $80 per share, the entry is:

Cash	$8,000	
Contingent Profit on Treasury Stock	1,000	
Loss on Sale of Treasury Stock	1,000	
To Treasury Stock		$10,000

In the above cases the realized profit or loss on sale of treasury stock should be regarded as an adjustment of sur-

plus, not as operating profit or loss. For this reason Capital Surplus may be substituted for "Loss on Sale of Treasury Stock" or "Profit on Sale of Treasury Stock."

13. Entries for Treasury Stock Purchased Above Par

If 100 shares of stock of $100 par value each are purchased at $110 per share the entry is:

Treasury Stock	$10,000	
Capital Surplus	1,000	
To Cash		$11,000

This is somewhat more conservative than charging the $1,000 item to Contingent Loss on Purchase of Capital Stock and the procedure here outlined is in accord with the rule of anticipating no profits and providing against all losses.

If, later, this stock is sold at cost the entry is:

Cash	$11,000	
To Treasury Stock		$10,000
Capital Surplus		1,000

14. Entries for Treasury Stock Donated

When treasury stock is donated the entry is a debit to Treasury Stock Donated account and a credit to Donated Surplus account at the par value of the stock. Thus if $10,000 par value of stock is donated the entry is:

Treasury Stock Donated	$10,000	
To Donated Surplus		$10,000

This may later be sold:

(*a*) At par
(*b*) Below par
(*c*) Above par

If sold at par, $10,000, the entry is:

Cash	$10,000	
To Treasury Stock Donated		$10,000

And to carry Donated Surplus to Capital Surplus:

Donated Surplus	$10,000	
To Capital Surplus		$10,000

If sold below par, say for $9,000, the entry is:

Cash	$9,000	
Capital Surplus	1,000	
To Treasury Stock Donated		$10,000

And to carry Donated Surplus to Capital Surplus:

Donated Surplus	$10,000	
To Capital Surplus		$10,000

This results in a net increase of $9,000 in Capital Surplus account, the amount realized on the donated stock.

If sold above par, say for $11,000, the entry is:

Cash	$11,000	
To Treasury Stock Donated		$10,000
Capital Surplus		1,000

And to carry Donated Surplus to Capital Surplus:

Donated Surplus	$10,000	
To Capital Surplus		$10,000

This results in a net increase of $11,000 in Capital Surplus account, the amount actually realized on the donated stock.

15. Capital Stock in the Balance Sheet

Illustrative of how several classes of stock may be shown in the balance sheet is the following statement of Capital Stock and Surplus found in the condensed consolidated balance sheet of General Motors Corporation, as at December 31, 1927:

Capital Stock:	
Seven per cent preferred stock (authorized $500,000,000)	$130,835,700.00
Six per cent preferred stock (authorized and outstanding)	1,713,400.00
Six per cent debenture stock (authorized and outstanding)	2,366,900.00
Common stock $25 par value (in 1927 authorized 30,000,000 shares. Issued and outstanding 17,400,000 shares)	435,000,000.00
Total Capital Stock	$569,916,000.00

Interest of minority stockholders in subsidiary companies with respect to capital and surplus	2,603,975.44
Surplus	187,819,083.30
Total Capital Stock and Surplus	$760,339,058.74

This is a satisfactory statement of the kinds and amounts of capital stock authorized and issued. Four classes of capital stock are more than are usually found, however. The balance sheet of the American Telephone and Telegraph Company as at December 31, 1927, shows a simpler structure, thus:

Capital Stock Par value of capital stock outstanding. Increase during year, $39,187,800. See page 18.	$1,103,415,600.00
Capital Stock Instalments Instalments paid on stock subscribed for but not yet issued. See page 18.	38,873,600.49

Surplus (Including Capital Stock Premiums) is shown as a separate item, viz., $272,435,981.85. The references to page 18 are to detailed explanations of the two items and are as follows:

Changes in Capital Stock Outstanding During 1927	Par Value
Capital Stock Outstanding Dec. 31, 1926	$1,064,327,800.00
Issued for cash in accordance with the terms of the offer of May 19, 1926, to stockholders of record June 8, 1926	17,641,400.00
Sale to public of portion of unsubscribed stock remaining in Treasury from offers to stockholders of record September 8, 1922, and June 10, 1924	1,291,900.00
Issued to employees of the Bell System upon completion of instalment payments under Employees' Stock Plan	20,154,500.00
Capital Stock Outstanding Dec. 31, 1927	$1,103,415,600.00
Increase during year	$ 39,087,800.00

Changes in Capital Stock
Instalments During 1927

Capital Stock Instalments December 31, 1926:	
From employees under Employees' Stock Plan	$37,916,703.72
From Stockholders under terms of offer dated May 19, 1926	10,552,175.65
Total	$48,468,879.37
Capital Stock Instalments December 31, 1927:	
From employees under Employees' Stock Plan	38,873,600.49
Decrease during year	$ 9,595,278.88

FORM 214

RESOLUTION ASSESSING STOCK

Resolved, That an assessment be, and is hereby levied upon all of the capital stock of this Company at the rate of $.....per share, payable to the Treasurer of this Company on or before ..... day of ....., 19....

FORM 215

RESOLUTIONS OF DIRECTORS MAKING A CALL ON STOCK

Resolved, That a call of $..... per share be made upon all of the preferred shares of the Company not yet fully paid up and that such call be made payable at ..... on the ..... day of ....., 19... next.

Resolved, further, that the secretary be and is hereby directed to give notice at once to all registered holders of such shares that such call has been made.

FORM 216

NOTICE OF CALL

To.....

You are hereby notified that by resolution of the Directors of the ..... Company duly passed on the ..... day of ....., 19..., a call is hereby issued on all the shares of the capital stock of the ..... Company

of ..... per centum of the subscribed capital stock of said Company payable on the ..... day of ..... next.

Your subscription is ..... shares of $..... each; total amount $.....; amount necessary to meet this call $.....

By order of the Board of Directors.

.....
Secretary

FORM 217

PUBLISHED NOTICE OF CALL

The.....Company

To stockholders of the ..... Company.

Notice is hereby given that a call of ..... dollars, ($.....) per share has been made in accordance with a resolution of the Board of Directors of the ..... Company, upon the unpaid balance of all stock of the Company issued and outstanding at ..... o'clock ... M. on ....., 19..., payable at the office of the ..... Trust Company, No. ....., ... Street, ..., or at the office of the ..... Trust Company, No. ....., ... Street, ... on or before ....., 19..., by all stockholders of record at 3 o'clock P. M. on said ....., 19....

Any stock upon which the full amount of this call shall not have been paid in the manner above specified on or before ....., 19..., will be sold by the Company of said call and all the expenses incident to the sale of said stock.

.....
President

FORM 218

NOTICE OF FINAL CALL UPON PARTLY PAID STOCK

..... Company

By resolution of the Board of Directors of the ..... Company passed at a meeting held on ....., 19..., final call of 30 Per Cent. was ordered on the partly paid capital stock. Said call to be payable at the office of the undersigned on or before ....., 19....

Stockholders are required to submit their certificates for endorsement at time of paying this call.

The transfer books of the Company will be closed on ....., 19..., at ..... o'clock .... M.

..... & Company

..... Street, ...

FORM 219

WAIVER OF NOTICE OF PAYMENT OF ASSESSMENT

We the undersigned subscribers to the capital stock of the ..... Company, a corporation organized under the laws of the state of ..... do hereby waive statutory notice and all other requirements as to notice of the time and place of the payment of our respective subscriptions, and do hereby agree to pay the amounts subscribed by us to the Treasurer of the Company at such times and in such manner as its Board of Directors may direct.

Dated, ..., 19....

Name	Number of shares owned
.....	.....
.....	.....
.....	.....

FORM 220

RECEIPT FOR INSTALMENT

The.....Company

Received of ..... the sum of ..... dollars, being the amount of a call of $..... per share on the common shares of the ..... Company as evidenced by certificate No. .....

Dated, ..., 19....

The ..... Company

By.....

Treasurer

FORM 221

NOTICE OF LIABILITY TO FORFEITURE

The.....Company

Sir,

In my notice of ....., 19..., you are informed that at a meeting of the Board of Directors a call was made on the common stock of this Company.

It is now my duty to inform you that by a further resolution of the Board of Directors you are required to pay the said sum of ..... dollars on or before ....., 19..., together with interest thereon at the rate of ..... Per Cent. from ....., 19..., to the day on which said payment is made.

In the event of your failure to pay said call together with interest thereon on or before said ....., 19..., at the place specified the shares in respect to which such call was made may, if the Directors so instruct, be forfeited.

.....
Secretary

FORM 222

RESOLUTION TO FORFEIT SHARES

Resolved, That ..... shares of the common stock of this company having a par value of ..... dollars each and represented by certificate No. ..... of which ..... is the registered holder, be and is hereby forfeited because of the non-payment thereon of a call amounting to $..... per share.

Resolved, furthermore, that the secretary be and is hereby directed to give notice forthwith to the said ..... of such forfeiture.

FORM 223

NOTICE OF FORFEITURE

The.....Company

Sir,

By resolution of the Board of Directors of the ..... Company I am instructed to inform you that the ..... shares of ..... dollars represented by certificate No. ..... of which you were the registered holder have by resolution of the Board of Directors of said Company duly passed at a meeting held on ....., 19..., been forfeited because of your failure to pay the call due thereon on ....., 19.... ....., 19....

.....
Secretary

FORM 224

NOTICE OF SALE OF STOCK FORFEITED

Notice is hereby given that on ....., 19..., at ..... o'clock ... M., the ..... Company will sell at public

auction at the office of said Company, No. ....., ... Street, ..., ... shares of the common capital stock of the ..... Company represented by certificate No. ..... of which ..... was the registered owner because of the non-payment of a call of ..... dollars per share due on said stock on the ..... day of ....., 19..., made by resolution of the Board of Directors of said Company passed on ....., 19....

The ..... Company
By .....
Secretary

FORM 225

CERTIFICATE OF STOCK

Incorporated under the laws of the State of .....
Capital Stock ..... $.....
No. ....., ... Shares
The .....Company

This certifies that ..... is the owner of ..... shares of the capital stock of the ..... Company, transferable only on the books of the said Company by the holder hereof, in person or by duly authorized attorney, on surrender of this certificate properly endorsed.

Witness the seal of said Company and the signatures of its President and Secretary this ..... day of ....., 19....

.....President
.....Secretary

Shares, $100 each.

(Corporate Seal)

ENDORSEMENT

For value received, ... hereby sell, assign and transfer unto ....., ... shares of the capital stock, represented by the within certificate, and do hereby irrevocably constitute and appoint ....., attorney, to transfer the said stock on the books of the within-named Company, with full power of substitution in the premises.

Dated, ..., 19....

In the presence of:

.....
.....
.....
.....

FORM 226

FULL PAID CERTIFICATE OF STOCK

Incorporated under the laws of the State of .....

Number ..... Shares .....

The ..... Company

Capital Stock $.....

This certifies that ..... is the owner of ..... shares of One Hundred Dollars each of the Capital Stock of the ..... Company, full paid and non-assessable, transferable only on the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this ..... day of ....., A. D. 19....

.....
President

(SEAL)

.....
Secretary

Shares, $100 each.

FORM 227

CERTIFICATE OF STOCK PARTIALLY PAID FOR

Incorporated under the laws of the State of .....

Number ..... Shares .....

The ..... Company

Capital Stock $.....

This certifies that ..... is the owner of ..... shares of One Hundred Dollars each of the Capital Stock of the ..... Company, on which has been paid on each share the sum of ..... Dollars, transferable only on the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be

sealed with the seal of the Corporation this ..... day of ....., A. D. 19....

.....
President

(SEAL)

.....
Secretary

Shares, $100 each.

FORM 228

TEMPORARY CERTIFICATE

Incorporated under the Laws of the State of .....

Temporary Certificate

Exchangeable for Engraved Certificate When Ready for Delivery

..... Company

Shares $..... Each Capital Stock $.....

This is to certify that ..... is the owner of ..... Shares of the capital stock of ..... Company, transferable only on the books of the company by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

Witness the seal of the company and the signatures of its duly authorized officers, affixed this ..... day of ....., 19...

.....Treasurer

.....
(SEAL) President

Countersigned.....

Trust Company

Transfer Agent

By.....

Secretary

Registered .....

The Trust Company of.....

Registrar

By .....

Secretary

(ENDORSEMENT)

For value received ..... hereby sell, assign and transfer unto ....., ... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint ..... Attorney to transfer

the said stock on the Books of the within-named Company, with full power of substitution in the premises.

Dated, ..., 19....

..... (SEAL)

Sealed and delivered in the presence of

.....

NOTICE: Signature to all powers of attorney and also powers of substitution must be guaranteed by party presenting certificate of stock for transfer.

NOTICE: The signature to this Assignment must correspond with the name as written upon the face of the Certificate in every particular without alteration or enlargement or any change whatever.

FORM 229

CERTIFICATE OF PREFERRED STOCK

Incorporated Under The Laws of The State of .....

No. ..... Shares .....

..... Company

Capital Stock $.....

This certifies that ..... is the owner of ..... shares of the Preferred Capital Stock of the ..... Company, transferable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly indorsed.

This certificate entitles the holder to receive, and the Corporation is bound to pay out of any and all surplus or profits whenever ascertained, (non) cumulative dividends thereon at the rate of ..... per cent, per annum, payable annually (semi-annually or quarterly) before any dividends shall be declared on the common stock.

(The preferred stock is subject to redemption at par on the ..... day of ....., 19..., or ..... at any other time thereafter that the Board of Directors may select.) (The holders of preferred stock shall have no vote in the corporation.)

In Witness Whereof, the said Corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation, this ..... day of ....., 19....

....

Secretary President

(SEAL) Shares, $..... Each

FORM 230

CERTIFICATE OF PREFERRED STOCK (UNITED STATES STEEL CORPORATION)

SEVEN PER CENT CUMULATIVE PREFERRED STOCK

No. ..... Shares .....

Incorporated under the Laws of the State of New Jersey.

UNITED STATES STEEL CORPORATION

This is to certify that ..... is the owner of ..... fully paid and non-assessable shares of the par value of one hundred dollars each in the Preferred Capital Stock of the United States Steel Corporation, transferable only in person or by attorney upon the books of said Corporation upon surrender of this certificate. The holders of the preferred stock shall be entitled to receive when and as declared from the surplus or net profits of the corporation, yearly, dividends at the rate of seven per centum per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart so that if in any year dividends amounting to seven per centum shall not have been paid thereon the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock. Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have been payable, and the accrued quarterly installments for the current year shall have been declared and the company shall have paid such cumulative dividends for previous years and such accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock payable then or thereafter, out of any remaining surplus or net profits. In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon, before any amount shall be paid to the holders of the common stock and after the payment to the holders of the preferred stock of its par value, and the unpaid accrued dividends thereon, the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The preferred stock

and the common stock may be increased as provided in the Certificate of Incorporation. This certificate is not valid without the signature of the Transfer Agent and the Registrar of Transfers.

Witness the signatures of the President or of a Vice President, and of the Treasurer or of any Assistant Treasurer of said Corporation.

....
Asst. Treasurer Vice President

Registered ....., 19...,
..... Trust Company, Registrar
By.....
Ass't Secretary

....., 19....
..... Trust Company, Transfer Agent
By.....
Ass't Secretary

ENDORSEMENT

For value received ..... hereby sell, assign and transfer unto ....., ... shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint ..... Attorney to transfer the said stock on the books of the within-named corporation with full power of substitution in the premises.

Dated, ..., 19....

.....

In the presence of

.....

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration, enlargement or any change whatever.

FORM 231

FIRST PREFERRED STOCK CERTIFICATE

No. ..... Shares .....

THE ..... COMPANY

Incorporated under the laws of the State of Illinois

Capital Stock $1,000,000 divided into:

First Preferred 8% Cumulative Stock, $250,000

Second Preferred 8% Cumulative Stock, $500,000

Common Stock, $250,000

Total Number of Shares 10,000, par value $100 each

This certifies that ..... is the owner of ..... fully paid shares of the First Preferred Capital Stock of .... Company, transferable only in person or by attorney, on the books of the Company upon the surrender of this certificate duly endorsed. The First Preferred Stock is entitled to a cumulative preferential dividend at the rate of, but never exceeding, 8% per annum on par value payable from profits at such times as the Board of Directors shall determine and has, on the liquidation or dissolution of the Company, preference over all other stock as to unpaid dividends, and, to the extent of its par value, to the distributive share of the assets. The Second Preferred Stock is entitled to a cumulative preferential dividend at the rate of, but never exceeding 8% per annum on par value, payable from profits after payment of all accumulated dividends on First Preferred Stock and before payment of any dividends on Common Stock, at such times as the Board of Directors shall determine, and having, on the liquidation or dissolution of the Company, preference over Common Stock as to unpaid dividends, and to the extent of its par value, to the distributive share of the assets.

The Common Stock has equal voting powers with the First Preferred and Second Preferred Stocks. After the payment of the dividends on the preferred stocks, dividends may be declared on the Common Stock from time to time out of the surplus earnings or net profits of the Company, and in such amounts as the Board of Directors in its discretion shall determine. In the event of the liquidation or dissolution of the Company after the payment of accrued and unpaid dividends on, and the par value of, the First and Second Preferred Stocks as herein provided, the Common Stock shall be entitled to the entire assets remaining.

This certificate shall not be valid until countersigned by the Registrar of Transfers.

In Witness Whereof the said ..... Company has caused this certificate to be signed by its President and Secretary under the corporate seal this ..... day of ....., 19....

.....
President

(SEAL)

.....
Secretary

(Seal)

Countersigned and registered this ..... day of ....., 19...

.....
Registrar of Transfers

FORM 231*a*

OATH OF PUBLICATION

ATTACH COPY OF NOTICE

Commonwealth of Pennsylvania
County of ..... } *ss:*

..... *being duly sworn, or affirmed, doth depose and say, that he is* ..... *of the* ..... *Company; that a notice, of which the above is a copy, was published in the* ..... , *a newspaper of general circulation, printed and published in the county of* ....., *Commonwealth of Pennsylvania, once a week, for sixty days, commencing on the* .....*day of* *192*

.....

Sworn to, or affirmed, and subscribed before me, this ..... *day of* ..... *A. D. 2*
[SEAL]

.....

.....

Form 231*b*

Oath of Judges

OATH OF JUDGES

Commonwealth of Pennsylvania }
County of ..... } *ss:*

On this ..... *day of* ..... *A. D. 192* , *personally appeared before me, a* ..... *in and for the county aforesaid* .....

.....

stockholders duly appointed judges, by the board of directors of the .....

Company, to conduct an election of said Company to be held on the ..... *day of*

.....

....., 192 , *who being duly sworn, or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability, and true return make of the same.*

.....
.....
..... } *Judges.*

Sworn to, or affirmed, and subscribed before me, the day and year aforesaid.

[SEAL] .....

.....

Form 231c

Judges' Return

JUDGES' RETURN

We, the undersigned judges, appointed by the board of directors of the _____

_____

Company to conduct an election by the stockholders thereof, for or against an increase of the _____

_____ *of the said company from $*_____ *to*

*$*_____, *do hereby certify, that after being duly sworn, or affirmed, we held the said election on the* _____ *day of* _____ *192* , *at the office of the said company, the time and place fixed for holding the same of which sixty days previous notice by publication was duly given, and in due form and manner we received the votes of the stockholders of the said company in favor of or against such increase. And at the said election there were voted in favor of such increase* _____ *shares, and against such increase* _____ *shares, thereby evincing the consent of the persons or bodies corporate, holding the larger amount in value of the capital stock of the said company, to the said increase.*

_____
_____
_____ } *Judges.*

192 ,

Name of Corporation.

ELECTION RETURN
AUTHORIZING

Filed in the office of the Secretary of the Commonwealth, on the _____ *day of* _____ *A. D. 192*

_____ *Deputy Secretary of the Commonwealth.*

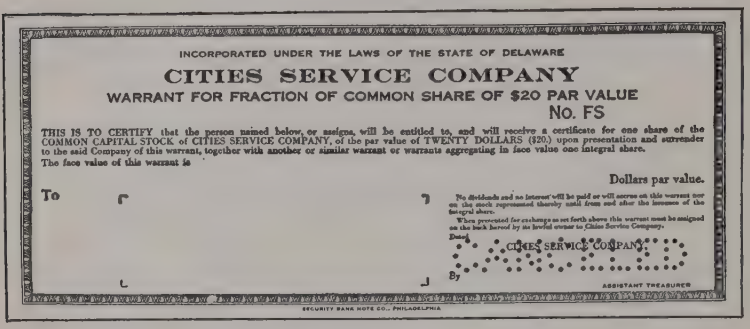
Recorded in Miscellaneous Corporations Record Book, No. _____ *page* _____

The fee for filing this paper is $30.00

A Typewritten List of all Signatures must accompany this Paper.

Form 232

Fraction of Share of Stock



INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

CITIES SERVICE COMPANY

WARRANT FOR FRACTION OF COMMON SHARE OF $20 PAR VALUE

No. FS

THIS IS TO CERTIFY that the person named below, or assigns, will be entitled to, and will receive a certificate for one share of the COMMON CAPITAL STOCK of CITIES SERVICE COMPANY, of the par value of TWENTY DOLLARS ($20.) upon presentation and surrender to the said Company of this warrant, together with another or similar warrant or warrants aggregating in face value one integral share.

The face value of this warrant is

Dollars par value.

To

No dividends and no interest will be paid or will accrue on this warrant nor on the stock represented thereby until from and after the issuance of the integral share.

When presented for exchange as set forth above this warrant must be assigned on the back hereof by an lawful owner to Cities Service Company.

Dated

CITIES SERVICE COMPANY

By

ASSISTANT TREASURER

SECURITY BANK NOTE CO., PHILADELPHIA

Form 233

Fraction of Share of Stock (Another Form)

SCRIP CERTIFICATE

General Electric Company

SPECIAL STOCK

PAR VALUE OF SHARES $10.00 EACH

No. Bos. SC-

One Half of one share

This is to Certify *That the Bearer is entitled to One Half of one share of the Special Stock of the GENERAL ELECTRIC COMPANY (issued pursuant to resolution adopted by the Board of Directors of the Company on August 22, 1924).*

Upon presentation and surrender at the office of THE FARMERS' LOAN AND TRUST COMPANY, Nos. 16-22 William St., New York, N. Y., or the AMERICAN TRUST COMPANY, No. 50 State St., Boston, Mass., of this certificate and another similar scrip certificate, the holder will be entitled to receive a certificate for one full share of Special Stock, of the par value of Ten Dollars.

The interest represented by this certificate is transferable upon the books of the Company only upon surrender of this certificate with another similar scrip certificate, as above provided, in exchange for a certificate for a full share.

No dividends will be paid upon scrip.

Dated, BOSTON, October 15, 1924.

GENERAL ELECTRIC COMPANY
By AMERICAN TRUST COMPANY
Transfer Agent

Registered
OLD COLONY TRUST COMPANY
Registrar

*By*_____
Assistant Secretary

*By*_____
Assistant Secretary

Form 234

Agreement to Deposit Stock in Escrow

The undersigned, being the owners of the certificates of stock of The ..... Company which are hereby enclosed, agree as follows:

That the certificates are hereby deposited in escrow with The ..... Trust Company for the following purposes and upon the following conditions, to wit:

To prevent the parties named in said certificates from selling or transferring same pending the organization and financing of The ..... Company.

If the sum of ..... Dollars ($.....) shall have been raised in cash by the sale of the stock and paid into the Treasury of The ..... Company on or before the ..... day of ....., 19..., then upon the certification of The ..... Company's treasurer to that effect said ..... Trust Company is hereby authorized to deliver to said parties respectively the certificates hereby deposited.

If the parties signing this agreement fail to raise the money as above stated then said ..... Trust Company shall be and is hereby authorized to deliver all of the said certificates to .....

.....(SEAL)
.....(SEAL)
.....(SEAL)

Form 235

Subscription Agreement Prior to Organization

Whereas, it is proposed to organize a corporation under the laws of the State of ....., to be known as The ..... Company, and whereas it is proposed that the said corporation shall have a total authorized capital stock of ..... Dollars, and shall carry on the business of ....., or such other businesses as may be appropriate to the objects of said company,

Now, therefore, the undersigned, in consideration of their mutual promises, hereby severally agree to and with each other and with ....., the promoter of said corporation, that they will take and pay for, and do hereby severally subscribe to, the capital stock of said corporation to the amount set opposite their respective names. This agreement is made upon condition that

said ..... shall secure subscriptions of not less than ..... Dollars to said capital stock. Dated, ..., 19....

Witness	Name	Amount
.....	.....	.....
.....	.....	.....

Form 236

Pre-Incorporation Subscription Agreement with Terms of Proposed Stock Issue

Whereas, the articles of association of The ..... Company, a corporation about to be organized under the laws of the State of ....., provides that said corporation shall have an authorized capital stock of ..... Dollars ($.....) divided into ..... shares, each having a par value of ..... Dollars ($.....), and furthermore divided into the following classes:

(Here insert description of different classes of stock)

Now, therefore, subject to the provisions of the laws of the State of ....., under the requirements set forth in said certification of incorporation, each subscriber hereto hereby agrees to accept the number and class of shares of capital stock in such proposed corporation as is annexed to his name. Each share shall be of the par value of ..... Dollars ($.....). Each subscriber furthermore agrees to pay fifteen per cent. (15%) of the amount of his total subscription within 25 days from date hereof in cash and balance in such instalments as the directors of The ..... Company shall require.

Dated July 25, 19....

Name	Address	Number and Class of Shares
.....	.....	.....
.....	.....	.....
.....	.....	.....

Form 237

Power of Attorney to Subscribe for Stock

Know all men by these presents, that I, ..., of the ..... of ..... and in ..... of ....., do hereby appoint ....., of the ..... of ....., my lawful attorney for me and in my name and

for my exclusive use and benefit to subscribe for ..... shares of the value of ..... each in the capital stock of the proposed ..... Company, and also to execute and do all such things as may be necessary to the incorporation of said company. I, the said ....., do hereby agree and covenant for myself, my heirs, executors and administrators to allow, ratify and confirm whatsoever my said attorney shall do or cause to be done in the premises by virtue of these presents, including in such confirmation whatsoever shall be done between the time of my decease or of the revocation of these presents, and the time of such decease or revocation becoming known to my said attorney or such substitute or substitutes.

Witness my hand and seal this ..... day of ....., 19....

.....(Seal)

FORM 238

SUBSCRIPTION TO CAPITAL STOCK AFTER INCORPORATION

We, the undersigned, do hereby severally subscribe for the number of shares of the capital stock or The.....Company set opposite our respective names, and do severally agree to pay said Company for each share the sum of $.....

Name	Shares	Amount
.....	.....	.....
.....	.....	.....
.....	.....	.....

FORM 239

SUBSCRIPTION BY LETTER

To....., Investment Bankers

Sirs:

I hereby subscribe for 100 shares of capital stock of the .... Company at $100 per share, in accordance with the terms of the circular issued by you and dated July 15, 19..; and agree to accept said stock or any less number of shares that may be allotted to me in case the total issue is oversubscribed, and to pay for same in accordance with the statements made in said circular.

Sincerely yours

.....

(Address)

Form 240
Revocation of Subscription

To The.....Company:

Whereas, on the.....day of....., 19.., I, the undersigned, subscribed for..... shares in the capital stock of the.....company, and,

Whereas, my subscription has not been accepted by said company, I hereby withdraw said subscription and do hereby notify you of the cancellation, withdrawal and revocation of same.

.....(Seal)

Dated....., 19...

Form 241
Individual Subscription Blank

I hereby subscribe for ..... shares of the capital stock of The ..... Company at the par value thereof, namely $50, and agree to pay twenty per cent (20%) of said subscription on call of the board of directors as soon as said Company shall be organized, 25% on call of the board of directors at any time after 60 days from the date of incorporation of said Company, and the remainder of said subscription at such times and in such amounts as may be required by the board of directors of said Company. The right is reserved by said proposed Company, or by the promoter of said Company, to reject or prorate any or all subscriptions.

.....(Seal)

Dated July 1, 19...

Form 242
Remittance with Application for Stock

To the Secretary of The ..... Company

Sir:

Herewith find enclosed the sum of ..... Dollars ($.....), being a deposit of ..... Dollars (4....) per share on ..... shares in The ..... Company. I understand that the purchase of this number of shares shall be in accordance with the terms of the Company's prospectus, dated ....., 19.., and I hereby agree to accept the same or any smaller number of shares that may be allotted to me.

Dated ....., 19...

(Name) .....

(Address) .....

FORM 243

ALLOTMENT LETTER

To.....
Sir:

In reply to your application for shares in the stock of this Company, I have the honor to inform you that by action of the board of directors you have been allotted ..... shares. The total amount payable thereon upon application and allotment is $..... Since you have paid on application $....., there remains to be paid by you $..... This sum is now due and must be paid to this Company on or before ....., 19..

Sincerely yours,

.....Secretary
.....Company

FORM 244

RECEIPT FOR SUBSCRIPTION

.....Company
Number..... Street.....
....., ..., 19..

Received of ....., ... Dollars ($.....) in full payment for ..... shares of the preferred stock of The ..... Company. Upon surrender of this receipt engraved certificates will be issued for the amount thereof, when same are completed.

.....Company
By.....
President

FORM 245

TRANSFER OF SUBSCRIPTION

I ....., of ....., for valuable consideration, do hereby sell, assign, transfer and set over all my right, title and interest as a subscriber to the capital stock of The ..... Company, a corporation organized and existing under the laws of the State of ....., to the extent of ..... shares, unto ....., and hereby request that said Company, by its proper officers, issue a certificate for said ..... shares to said ....., or to his assigns.

In witness whereof I have hereunto set my hand and seal this ..... day of ....., 19...

.....(Seal)

FORM 246

CERTIFICATE OF AMENDMENT INCREASING CAPITAL STOCK. (KENTUCKY)

(Sign, acknowledge, record in county court clerk's office and forward attested copy to Secretary of State.)

This certificate of amendment to the articles of incorporation of ..... (Name of corporation), witnesseth:

Whereas, the owners and holders of more than two-thirds of the capital stock of ..... (Name of corporation), a Kentucky corporation organized ....., 19.., (legal notice having been given all stockholders of the proposed amendment), have requested and consented in writing that the articles of incorporation shall be changed or amended as hereinafter set out:

Now, therefore, we, the undersigned present and directors of ..... (Name of corporation), (constituting a majority thereof), in order to carry out the said request of the stockholders, do hereby on this ..... day of ....., 19.., certify that the articles of incorporation of ..... (Name of corporation), be and the same are amended as follows, to-wit:

Article ..... is amended by increasing the amount of authorized capital stock of the ..... (Name of corporation) from ..... ($.....) dollars to ..... ($.....) dollars, so that when amended, said article shall read as follows, to-wit:

"Article ..... The amount of capital stock of said corporation shall be ..... ($.....) dollars, which shall be divided into ..... (.....) shares of ..... ($.....) dollars each."

In testimony whereof, the president and a majority of the board of directors of ..... (Name of corporation) have hereunto signed their names, this ..... day of ....., 19...

....., President.
....., Director.
....., Director.
....., Director.
....., Director.

State of Kentucky, }
} ss.
County of ..... }

I, ..., clerk of the county court of the county and State aforesaid, do certify that the foregoing amended articles of incorporation were produced to me in my office and acknowledged and delivered by....., President; ....., Director; ....., Director; ....., Director; ....., Director;

....., parties thereto to be the act and deed of said corporation and that I have recorded them and this certificate in my said office.

Witness my hand this ..... day of ....., 19...

....., Clerk.

By....., D. C.

A copy attest:

....., Clerk.

By....., D. C.

Form 247

Increase of Capital Stock or Indebtedness (Pennsylvania)*

_____ *Company*

Election Return authorizing an increase of _____

_____

WAIVER OF NOTICE

To the Directors of _____ **Company**

We, the undersigned stockholders in the _____

_____ Company, who are holders of the stock of said company, to the amount set opposite our several names, request that you, by resolution, declare that it is the desire of the corporation to increase its _____ from $ _____ to $ _____, and that you, by resolution, call a meeting of the stockholders in the company to be held on the _____ day of _____, 19____ for the purpose of voting for or against such increase. And we do hereby waive the notice of such meeting of the stockholders, required to be given by the Seventh Section of the Sixteenth Article of the Constitution of the Commonwealth of Pennsylvania, and by the laws thereof, relating to the increase of capital stock or indebtedness of corporations, as well as by any by-law of the Company requiring notice of such meeting to be given:

NAME	No. of Shares	NAME	No. of Shares

NOTE.—A TYPEWRITTEN LIST OF ALL SIGNATURES MUST ACCOMPANY THIS PAPER. THE FEE FOR FILING THIS PAPER IS $35.00

* This form is used where notice is waived by consent of each and every stockholder.

Form 247*a*

Increase of Capital Stock or Indebtedness (Pennsylvania)

COMMONWEALTH OF PENNSYLVANIA }
County of _____ } ss:

_____ being duly sworn or affirmed, doth depose and say that he is the Secretary of the _____ Company, that the stock ledger of said Company is in his custody and under his control, and that the list of stockholders given in the above waiver of notice of a meeting be held for the purpose of voting for or against the increase of the _____ of said Company, is a complete list of such stockholders, and that they are the owners of the entire issue of the stock of said Company, and that the signatures to said waiver are genuine and in the proper handwriting of the subscribers.

_____
Secretary

Sworn to, or affirmed, and subscribed before me, this _____ day of _____ A. D. 19____

SEAL

_____

_____

FORM 247*b*

INCREASE OF CAPITAL STOCK OR INDEBTEDNESS (PENNSYLVANIA)

RESOLUTIONS OF THE BOARD OF DIRECTORS

_____ *Pa.,* _____ *19*

I HEREBY CERTIFY, That the following resolutions were adopted by a majority of the entire Beard of Directors of the _____ Company, at a meeting held at the principal office of the company on the _____ day of _____ 19____.

"Resolved, That the _____ of this company be increased from $_____ to $_____;

"Resolved, That a meeting of the stockholders be called to convene at the general office of this company on the _____ day of _____ A. D. 192____, to take action on approval or disapproval of the proposed increase of the _____ of this Company, the notice by publication, required to be given by the Constitution and laws of this Commonwealth, having been waived by the unanimous consent of the stockholders.'

Corporate Seal

Attest:

_____ Secretary

_____

OATH OF JUDGES

COMMONWEALTH OF PENNSYLVANIA }
County of _____ } ss:

On this _____ day of _____ A. D. 19____, personally appeared before me, a _____ in and for the county aforesaid

_____

_____, stockholders duly appointed judges, by the board of directors of the _____

_____

Company, to conduct an election of said Company, to be held on the _____ day of _____, 19____, who being duly sworn, or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability and true return make of the same.

Sworn to, or affirmed, and subscribed before me, the day and year aforesaid.

_____

_____

_____ } Judges

_____

SEAL

_____

Form 247c

Increase of Capital Stock or Indebtedness (Pennsylvania)

JUDGES' RETURN

We, the undersigned judges, appointed by the board of directors of the _____ Company to conduct an election by the stockholders thereof, for or against an increase of the _____ of the said Company, from $ _____ to $ _____ do hereby certify, that after being duly sworn, or affirmed, we held the said election, on the _____ day of _____, 19__, at the office of said Company the time and place fixed for holding the same, of which sixty days' previous notice by publication was duly waived, and in due form and manner we received the votes of the stockholders of the said Company in favor of or against such increase; and at the said election there were voted in favor of such increase _____ shares and against such increase _____ shares, thereby evincing the consent of the persons or bodies corporate, holding the larger amount in value of the capital stock of the said Company, to the said increase.

_____
_____
_____ } Judges

19 _____
(Name of Company)

ELECTION RETURN
WITH WAIVER
AUTHORIZING

Filed in the office of the Secretary of the Commonwealth, on the _____ day of _____ A. D. 19

_____
Deputy Secretary of the Commonwealth

Recorded in Miscellaneous Corporation Record Book, No. _____, Page _____

THE FEE FOR FILING THIS PAPER IS $35.00

Form 248

Increase of Capital Stock or Indebtedness (Pennsylvania)*

_____ *Company.*

Election Return Authorizing an Increase of _____

RESOLUTIONS OF THE BOARD OF DIRECTORS

_____ *Pa.,* _____ *192__*

I HEREBY CERTIFY That the following resolutions were adopted by a majority of the entire board of directors of the _____ *Company at a meeting held at the principal office of the company on the* _____ *day of* _____ *192__:*

"Resolved, That the _____ *of this company be increased from $*_____ *to $* _____

"Resolved, That a meeting of the Stockholders be called to convene at the general office of this company on the _____ *day of* _____ *192__, to take action on approval or disapproval of the proposed increase of the* _____ *of this company, and that the secretary be and is hereby directed to give notice thereof as required by law."*

Attest: _____
Secretary.

SEAL

NOTE.—A TYPEWRITTEN LIST OF ALL SIGNATURES MUST ACCOMPANY THIS PAPER. THE FEE FOR FILING THIS PAPER IS $30.00.

* This form is used in Pennsylvania where notice is given by advertisement for the statutory period (see Form 231*a*).

FORM 249

REPORT OF SALE OF CAPITAL STOCK (MISSOURI)

To the Secretary of State of the State of Missouri:

State of Missouri, }
} ss.
County of ..... }

The undersigned, being all of the officers and directors of the ....., a corporation duly incorporated under the laws of Missouri on the ..... day of ....., 19.., being duly sworn upon their oaths, state that ..... (at least one-fourth) of the capital stock of said corporation that was unsubscribed at the time of its organization has been sold and payment has been made therefor to the corporation in the sum of ..... dollars, lawful money of the United States, and is now in the custody of the board of directors.

(If payment is made in property recital should be as follows: "And payment has been made therefor to the corporation in property which is now in the custody of the board of directors; an itemized description of which, with the location and actual cash value of each item thereof, is as follows, viz.:.....")

(Names and titles of officers.)

.....
.....
.....
.....
.....
.....

Subscribed and sworn to before me this ..... day of ....., A. D. 19...

My commission expires ....., 19...

(SEAL) .....Notary Public.

FORM 250

STATEMENT DECREASING CAPITAL STOCK (MISSOURI)

Be it known, that on the ..... day of ....., 19.., a meeting of the stockholders of the ....., a corporation under the laws of Missouri, was held at the city of ....., county of ....., State of Missouri, for the purpose of decreasing the capital stock of said company,* pursuant to notice signed by a

*If action is without published notice, omit the remainder of paragraph and insert as follows: "Notice as to time of holding such meeting being waived by the unanimous consent of all the stockholders."

majority of the directors of said company, duly published by the ....., a newspaper published in the city of ....., for more than sixty days prior to said date, the first insertion of said notice being on the ..... day of ....., 19..., and the last insertion on the ..... day of ....., 19....

That a copy of said notice, postage prepaid, was deposited in the post office in the city of ....., Missouri, addressed to each stockholder at his usual place of residence at least sixty days previous to the day fixed for said meeting.

That said meeting was organized by choosing ....., a director in said company, chairman, and ....., secretary thereof.

That at said meeting there were present, in person or by proxy, at least a majority of the stockholders holding the full value of all the shares of stock of said company.

That a proposition was then and there submitted to decrease the capital stock of said company from $..... to $.....

And upon canvassing the vote thereon it appeared that a majority of the stock of said company had been voted in favor of such decrease. The amount of the capital stock of said company, paid up, is ..... dollars. The amount of the assets of said company is ..... dollars. The amount of its liabilities is ..... dollars, and the amount to which the capital stock of said company is decreased is ..... dollars, divided into ..... shares of the par value of ..... dollars each.

....., Chairman.

Attest:

....., Secretary.

Subscribed and sworn to before me, this ..... day of ....., 19...

My commission expires ....., 19...

(SEAL) ....., Notary Public.

State of Missouri, }
} ss:
County of ..... }

On this ..... day of ....., 19.., before me personally appeared ..... (name of chairman), to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed

my notarial seal, the day and year above mentioned. My commission expires ....., 19..

(SEAL) ....., Notary Public.

NOTE—The statement must be sworn to by the chairman, and also acknowledged by the chairman before a proper officer; then recorded in the office of recorder of deeds and a certified copy from the recorder filed in the office of the Secretary of State. The state's fee for certificate of decrease will be $1.25.

FORM 251

AFFIDAVIT OF OWNERSHIP TO ACCOMPANY BOND OF INDEMNITY

State of .....
} ss.
County of .....

....., being duly sworn, deposes and says that he is an adult, and resides at ....., and is the owner and entitled to the possession of a certain certificate for ..... shares of the capital stock, of The ..... Company, a corporation organized under the laws of ....., dated the ..... day of ....., 19.., and numbered ....., issued to him by said The ..... Company, and described in a certain bond of indemnity hereunto annexed, executed by him and by ..... and ....., and dated the ..... day of ....., 19...

(Here set forth facts concerning the loss, destruction, theft, etc., of such certificate.)

That he, the said affiant has not disposed of said shares of stock or said certificate therefor to any other person or persons nor given any person or persons any transfer, power of attorney, order or other authority of any kind or nature whatsoever to transfer the said stock evidenced by said certificate numbered ..... nor any part or portion thereof. Affiant further says that he makes this statement of the above facts under oath in order to induce said The ..... Company to issue to this affiant a new certificate of stock for ..... shares in the place of the said certificate heretofore described, and numbered ..... as aforesaid.

.....

Subscribed and sworn to before me this ..... day of ....., 19...

.....

FORM 252

BOND OF INDEMNITY FOR ISSUE OF STOCK CERTIFICATES

BOND OF INDEMNITY
For Issue of Stock Certificates

Know All Men By These Presents, That we,

.....of.....

as principal, and.....

a corporation of the State of....., as surety, are held and firmly bound unto the GENERAL ELECTRIC COMPANY, a corporation organized under the laws of the State of New York having its principal place of business in the City of Schenectady, in said State, and unto its Transfer Agents and Registrars, in the sum of.....

($.....) dollars, lawful money of the United States of America, to be paid to the said GENERAL ELECTRIC COMPANY, its Transfer Agents and Registrars, or its and their several successors or assigns; for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this.....day of....., A.D. 192....

CONDITIONS

The conditions of this obligation are such that

WHEREAS the following described certificate.....of Common / Special stock of GENERAL ELECTRIC COMPANY, that is to say, Certificate..... numbered..... for..... share.....of Common / Special stock standing upon the books of said Company in the name of said principal, ...alleged to have been lost or destroyed, and

WHEREAS said Company has agreed to issue new or duplicate certificate in lieu thereof;

NOW THEREFORE, if the said obligors shall well and truly save harmless the said GENERAL ELECTRIC COMPANY, its Transfer Agents and Registrars, and its and their several successors and assigns against all claims on account of said certificate..... so alleged to have been lost or destroyed, and the stock represented thereby, and against all costs and expenses by reason of such claims; whether or not caused by, based upon or arising out of inadvertence, accident, oversight, omission, failure or neglect on the part of the obligees or their respective officers, agents, clerks and employees; then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered
in the presence of: .....(L. S.)
(Principal)

.....

ATTEST: .....
(Surety)

..... By.....

.....

State of.....
County of..... } SS:

On this..... day of ....., 192....., before me personally came....., the principal named in the foregoing bond, to me personally known and personally known to me to be the individual described in and who executed the foregoing bond, and.....he acknowledged to me that.....he executed the same.

.....
Notary Public

My commission expires..... 192.....

XV

PERMANENT CAPITAL FINANCING

Bonds and Notes

1. Introductory

Financing carried out to secure permanent capital may be either an aspect of the promotion of a new enterprise or it may be an aspect of the expansion or reorganization of an old one. Sometimes financing is necessary also when two or more enterprises are merged or consolidated. Frequently, too, refunding operations are in order, their purpose being not to secure additional capital but to replace existing obligations with others, either because the outstanding obligations have matured or because they may be advantageously exchanged for others. Nearly every piece of financing involves the valuation of assets, the only exceptions perhaps being the financing of entirely new enterprises and the refunding of outstanding issues of securities. Even in these cases the principles of valuation as they affect the various groups of securities issued by a company cannot be disregarded.

The expression "permanent capital financing" used here in contrast with "working capital financing" used in another section of this book is somewhat of a misnomer, since working capital is likely to be just as permanent as are capital assets. In fact, working capital is just as likely to be provided for by permanent capital financing as are capital assets in the form of land and plant. Current assets can be financed through current liabilities only to the amount of such current liabilities; hence the excess of current assets over current debts, known as working capital, must be derived from the

issuance of long-term bonds, stock, or the accumulation of surplus earnings. Permanent capital financing, therefore, is employed to comprehend the plans by which all asset values in excess of current liabilities are financed.

From the foregoing it follows that the accumulation of surplus is one of the important aspects of financing both working capital and capital assets. The intimate dependence of earnings on valuation principles is evident, since adequate deductions for obsolescence, depletion and depreciation are essential to a correct determination of net profits. Likewise the company's dividend policy is intimately related to its problem of long-term financing, the distribution of surplus as dividends placing greater dependence on bond and stock issues for the requirements of expansion.

In all reorganizations and consolidations the application of appraisal principles is a matter of primary importance, as it is in case of all purchases and sales of property. Likewise, the principles of valuation underlie correct plans of capitalization. These principles and their application in appraisals are considered in another part of this book.

2. The Investment Banker

The investment banker plays an important rôle in most permanent capital financing. Whereas the function of the commercial banker is to finance the current requirements of his customers, the function of the investment banker is to devise and carry into effect means of securing funds to be employed in long-term financing, such as the purchase of capital assets or the refunding of outstanding obligations in form of stocks or bonds. As Dewing points out in his *Financial Policy of Corporations,* pages 279-280, capital is secured from five sources, viz., call money loans, commercial paper, short-term securities, long-term bonds, and capital stock. The commercial banker is primarily interested in the first two methods of financing, the investment banker in the last three methods, although commercial bankers sometimes

underwrite issues of short-term notes. It is for this reason that the commercial banker is primarily interested in the working capital position of a concern, whereas the investment banker takes a somewhat deeper interest in capital asset values.

It is the duty of the investment banker to so familiarize himself with the investment market and demands of investors that he may be able in a given instance to determine what form of security is most likely to meet a company's requirements, the status of the company's finances being taken into consideration. Thus there are periods when short-term notes are extensively resorted to because of conditions of the money market. This was the situation during the World War. Interest rates were abnormally high and to avoid incurring long-term obligations under such conditions short-term obligations were issued and these were usually callable before maturity. Immediately upon the signing of the Armistice long-term bonds began to advance in price and in a short time corporations again began financing through long-term bond issues.

There are times when stocks may be readily marketable; at other times bonds are preferable. It is the duty of the investment banker to gauge the market and advise as to the best plan of financing under the circumstances.

Sometimes commercial banks and stock brokers undertake the flotation of security issues. The desirability of such an innovation is doubtful.

In making a selection of securities which he is willing to underwrite the investment banker must depend to a considerable extent upon the services of legal and accounting specialists.

3. The Financial Plan

Before an investment banker will finance an issue of securities he must know something of the plans of the promoter or manager of the enterprise. Based upon such investiga-

tion of these as he thinks necessary, he makes his decision to accept or reject the proposal. A part of his work consists in devising a financial plan involving the detailed consideration of the kind and amount of securities to be issued. Before doing this he must obtain from the management of the company desiring to be financed all available information relative to its status and earning capacity; or if the concern is one being promoted, he must secure all available information relative to its prospective possibilities. Conservative bankers reject most proposals to finance new enterprises because of the risks involved or because it is at once evident that they are "wildcat" ventures possessing none of the requisites of successful operation. Too often the investment banker relies exclusively upon information derived from a letter written to him by the president of the company needing funds. Such letters may be altogether conservative and may contain only information which the company's president believes to be accurate; nevertheless, the banker should make his own investigation for the purpose of substantiating it or supplementing it with such additional information as his own requirements demand. For illustration of a letter from a corporation president to investment bankers, see Form 253. Especially is it necessary that the investment banker make an independent investigation where it is proposed to capitalize on the basis, not of conservatively valued assets, but of earning power where the history of the company is not such as to justify belief that the present rate of earnings can be maintained.

The investment banker assumes full responsibility for the financing plan, hence it is his duty to formulate it.

It is not always clear just where the work of the promoter leaves off and that of the investment banker begins. In some instances the promoter takes it upon himself to supervise the issuance of capital stock and do all things necessary to place the concern in a position to commence operations. Not infrequently this is because he is unable to interest the investment banker in his undertaking.

Form 253

Letter to Investment Bankers

Western Power Light & Telephone Company
Office of the President
Kansas City, Missouri, January 26, 1928.

A. B. Leach & Co., Inc.,
Porter Fox & Co., Inc.
Gentlemen:

In connection with your purchase of $2,750,000 First Lien Collateral 20-Year 6% Gold Bonds, Series A, of this Company, I submit the following information:

Business

Western Power Light & Telephone Company, incorporated under the laws of Delaware, owns and operates through subsidiary companies a group of public utility properties in Kansas and Oklahoma and is now acquiring additional subsidiaries which will own and operate properties located in Missouri, Kansas and Oklahoma. The Company, upon completion of the present financing, will own all outstanding capital stocks (except directors' qualifying shares) and funded debt of these subsidiary companies.

The present subsidiaries and those to be acquired supply 100 communities in Missouri, Kansas and Oklahoma with one or more classes of utility service, so located as to permit economical operation as a unit. Electric light and power is furnished in 24, water in 1, and telephone service in 79 communities. Electric power is also supplied wholesale to 5 communities. The population served with electricity, water and telephone is estimated at more than 125,000 and the number of customers exceeds 31,000.

The Company has also acquired all outstanding capital stock of a subsidiary which owns three of the principal ice manufacturing plants at Dallas, Texas, and the controlling stock interest in City Ice Delivery Company, the leading distributor of ice for the entire city of Dallas. The manufacturing plants are of latest type and the properties have been successfully operated for twenty-one years under management which will continue under the new ownership. The manufacturing plants have a capacity of 210 tons per day and 13 retail ice service stations are owned, serving the residential district of the city.

The electric light and power properties in south-central Kansas are supplied in part by electric power generated at 4 stations. The balance of electric energy distributed is purchased under

contract at favorable terms from other companies. Interconnections are furnished by 175 miles of transmission lines.

The telephone properties are concentrated in the rich agricultural regions of central Kansas and northern Missouri. They serve important trade centers and surrounding rural districts. The system includes 1,481 miles of toll lines and a majority of the 79 local exchanges occupy buildings owned by the subsidiaries. Long distance service with all parts of the United States and Canada is handled over lines of the Bell Telephone System and other companies through joint operating agreements.

Capitalization

(Upon completion of the present financing)

	Authorized	Outstanding
First Lien Collateral 20-Year 6% Gold Bonds Series A	$5,000,000*	$2,750,000
7% Cumulative Preferred Stock (par value $100)	2,000,000	1,350,000
Common Stock (par value $1)	100,000	100,000

Subsidiary companies will have no funded debt in the hands of the public.

Security

The First Lien Collateral Bonds, in the opinion of counsel, will be a direct obligation of the Company and upon completion of the present financing will be secured by first lien on all outstanding capital stocks (except directors' qualifying shares) and all outstanding funded debt of pledged subsidiaries, all of which will be deposited and pledged with the Trustee. No additional stocks or bonds may be issued by these pledged subsidiaries unless deposited with the Trustee and pledged under the Indenture. City Ice Delivery Company is not a subsidiary under the Indenture.

Valuation

The properties were examined in 1927 by Messrs. Hagenah & Erickson, Engineers, whose reports show a total fair depreciated value of $5,448,732 for properties of subsidiaries under the Indenture. The First Lien Collateral Bonds to be outstanding upon completion of the financing will be less than 51 per cent of this valuation.

* Additional series may be authorized, as set forth on the following page.

Earnings

The combined earnings of the properties owned and to be acquired by subsidiaries under the Indenture, for the year ended November 30, 1927, before depreciation and Federal Income Taxes, as reported by independent auditors, are as follows:

Gross Revenue	$879,848.76
Operating Expenses, Maintenance and Taxes	501,272.97
Net Income before Interest, Depreciation and Federal Taxes	$378,575.79
Annual Interest Requirement of First Lien Collateral Bonds	$165,000.00

The above net income before depreciation and Federal Income Taxes for the year ended November 30, 1927, is more than 2.29 times the annual interest requirement of the First Lien Collateral Bonds to be outstanding.

Issuance of Additional Bonds

The Indenture will provide that, subject to the limitations thereof, $2,250,000 additional First Lien Collateral Bonds of Series A and additional series of bonds may be issued:

1. par for par against cash or United States Government obligations deposited with the Trustee for specified purposes; or
2. to refund other bonds issued under the Indenture bearing the same or higher rates of interest; or
3. in principal amount not exceeding 80 per cent of the cost to the Company or fair value (whichever is less) of additions, extensions or improvements, whether constructed or acquired, to the permanent property of the Company, provided that all such extensions and purchased property shall be subject to the lien of the Indenture; or
4. up to the full principal amount of first mortgage bonds of subsidiaries issued in amounts not exceeding 80 per cent of the cost to the subsidiaries or fair value (whichever is less) of permanent property of such subsidiaries including additions, extensions and improvements thereto, acquired after a date fixed in the Indenture. Such first mortgage bonds of subsidiaries shall be deposited with the Trustee and pledged as collateral under the Indenture and, in the case of any new subsidiary, not less than 90 per cent of all outstanding shares of each class of capital stock of such new subsidiary shall also be deposited and pledged.

The Indenture will provide that no additional bonds may be issued, however, unless net earnings (as defined in the Indenture and including net earnings from properties to be acquired) for twelve consecutive calendar months within the sixteen calendar months next preceding the date of application for such additional bonds, shall have been not less than 1¾ times the annual interest on all bonds then outstanding under the Indenture and those then proposed to be issued; but this provision shall not apply in case bonds, cash or United States Government obligations are delivered to the Trustee for the refunding or redemption of bonds issued under the Indenture bearing the same or higher rates of interest.

Franchises

No competition is experienced in any of the communities served with electric light and power, water or telephone. In the opinion of counsel, the franchises under which the electric, water and telephone properties are operated are as a whole satisfactory and without burdensome restrictions.

Purpose of Issue

Proceeds from sale of these bonds, together with the sale of Preferred Stock, will be used to retire the issue of Two Year 6% Gold Notes of the Company, acquire new subsidiaries referred to above, provide additional working capital and for other corporate purposes.

Management

The management is in the hands of an experienced organization comprising men who for many years have engaged in the construction and successful operation of public utility properties in this territory, both in their present capacities and in responsible positions with other utility companies.

Yours very truly,
Nathan L. Jones,
President.

---

4. Financial Plan for Going Concern

Most successful companies require refinancing at intervals in their history. Also the unsuccessful ones are apt to require financial aid of one sort or another. These are

considered in the chapter on Reorganizations and Consolidations, also in that on Bankruptcy and Receivership.

A not infrequent item of news in the financial page is illustrated by the following:

New York, March 9. New York Air Brake, at its annual meeting on April 11, will submit to stockholders proposals for important changes in its charter. It is planned to increase authorized capital stock from 300,000 to 500,000 shares and to expand the company's powers, now very limited, to permit it to engage in practically any line of manufacture desired.

There is no intention to issue forthwith the 200,000 shares of additional stock that will be available when the charter changes are approved. The purpose of the authorization is to put the company in position to acquire other concerns and for other possible corporate uses. Air Brake for years has been looking around for additional products to manufacture and while nothing definite along this line has been done the present action indicates some action may not be far away.

Here is indicated the inception of a program to finance an expanding business. The manner in which stock and bonds are authorized and issued and the principles governing the financing of companies generally are considered in the following pages.

5. General Principles of Borrowing

Money may be borrowed either on the general credit of the borrower or on specific security. An illustration of unsecured loans are the lines of credit granted by banks to their customers; an illustration of secured loans are bonds which have a lien on some piece of real estate or on the general assets of a company.

When money is borrowed by issuing bonds upon which a fixed rate of interest must be paid, it is imperative that over reasonably long periods of time the money be used so as to earn more than the amount necessary to meet interest charges on the debt. It is only under such circumstances that permanent borrowing is profitable. If this cannot be

accomplished, borrowing should be indulged in only as an emergency measure. That permanent borrowing is regarded as a desirable form of financing is shown in the large number of outstanding bond issues having maturity dates far in the future.

If a company can borrow money at a rate of 5½ per cent and employ it so as to earn 8 or 10 per cent thereon, it is obvious that the stockholders will fare better than they would were no money borrowed. The reason that a concern cannot go on borrowing endlessly, piling up funded debts far in excess of capital stock and surplus, is that it cannot always be sure of earning interest charges in long periods of depression. Borrowing excessively thus becomes a species of speculation or even gambling, with the chances of greater gains and also of insolvency increasing as the borrowings increase in proportion to the amount of capital furnished by the stockholders. In some lines the risks are such that resort should not be had to bond issues. In others the amount so secured should be much smaller than that secured from stock sales. In still other lines relatively large sums may be derived with a reasonable degree of safety from bond issues.

There may be other obstacles to further borrowing than those mentioned above. The nature of the business may be such that funds are not needed. Increased loans mean higher interest rates, both because the security furnished is less satisfactory and because the fixed charges are increased.

6. The Mortgage

Several kinds of mortgages are employed by corporations when they desire to borrow money. The procedure in such cases is to appoint a trustee who holds the mortgage in the interest of the bondholders, the latter being too numerous to have mortgages issued to them individually. Such mortgages are frequently called trust deeds, because they convey title to the trustee who holds it in trust for the bondholders. Among the more common forms of trust deeds are real estate

mortgages, equipment mortgages, collateral trust mortgages and general mortgages.

A mortgage is a deed of title given to secure the performance of some act, usually the repayment of a loan. Although the conveyance of title is absolute in form, the mortgage contains a defeasance clause which provides that the conveyance of title shall be void in case the mortgagor repays the loan at the time specified.

7. Form of Mortgage

Form 254 is a form of mortgage issued to a trust company as trustee to secure one or more promissory notes. In principle this mortgage is the same as one given direct to an individual; however, being issued to a trust company as trustee, it is known as a "trust deed." In such cases it is the duty of the trust company to look after details of enforcement, interest collection, foreclosure, etc.

FORM 254

TRUST DEED FORM OF MORTGAGE

(1) This Indenture, Made this ..... day of ..... in the year of our Lord one thousand, nine hundred and ..... BETWEEN .... hereinafter sometimes called party of the first part, and THE ..... TRUST COMPANY, an Illinois corporation, located at Chicago, as Trustee, hereinafter sometimes called party of the second part.

(2) Witnesseth, that Whereas, the said .... justly indebted upon ..... promissory note ..... of even date herewith for the principal sum of ..... Dollars payable to the order of .... Bearer and delivered; said principal note ..... being described as follows:

with interest thereon from ..... at the rate of ..... per cent per annum, payable semi-annually on the ..... day of ..... and of ....., in each year, until the maturity of said principal note ..... evidenced by ..... interest notes of even date herewith, both principal and interest being

payable in gold coin of the United States of America of the present standard weight and fineness at the office of THE ..... TRUST COMPANY, Chicago, Illinois, and bearing interest at the rate of seven per cent per annum after the maturity thereof. The identity of said principal note ..... is evidenced by the certificate thereon of said Trustee.

(3) Now, Therefore, The said party of the first part for the better securing of the payment of the said principal sum and interest, and the performance of the covenants and agreements therein contained by the said party of the first part to be performed, and in consideration of One Dollar in hand paid, the receipt whereof is hereby acknowledged, does by these presents convey and warrant unto the said party of the second part, the following described real estate situated in the ....., County of ..... and State of Illinois, to-wit:

(4) *To Have and to Hold the Same,* together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, and the rents, issues and profits thereof, and all apparatus and fixtures of every kind thereon, or that may be placed in any building now or hereafter standing on said land, and also all the estate, right, title and interest of the said party of the first part in and to said premises, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which rights and benefits are hereby expressly released and waived;

(5) *In Trust, Nevertheless,* for the uses and trusts herein set forth, and for the equal security of the said principal and interest notes hereinbefore described, without preference or priority of said principal note... over any of the others by reason of the priority of time or maturity or of the negotiation thereof or otherwise.

(6) *Said party of the first part* hereby covenants and agrees with the said party of the second part as follows: To pay the notes hereby secured as the same may become due and payable together with all expenses of this trust; during the period of the indebtedness as aforesaid to keep said premises in good repair; on or before the first day of May in each year to pay all taxes and assessments levied or assessed upon said premises or any part thereof and not to suffer any part of said premises or interest therein to be sold or forfeited for any taxes or special assessments whatsoever and to exhibit once a year on demand of the party of the second part receipts of the proper persons showing the payment of said taxes and assessments; not to suffer any lien of mechanics or material men to attach to said premises, it being

hereby expressly agreed between the parties that no material men's or mechanics' lien shall be made or established upon the above described property during the existence of the lien hereby created, and in case any improvements or betterments are placed on said premises during the existence of this lien, they will be held as additional security for the indebtedness hereby secured, and all material men's and mechanics' liens which might otherwise have been established on said premises during the existence of this lien shall be subject to this lien and that this provision shall be held as a notice to all persons furnishing labor or material of the existence of this contract and of this agreement; not to permit to be done upon said premises anything that may impair the value thereof, nor the security intended to be affected by virtue of this instrument. In case of default in payment of said notes or any of them, or the interest thereon, or any part thereof, or in case any of the improvements on said premises shall be destroyed, or in case of waste or non-payment of taxes or assessments, or upon neglect to renew or procure insurance as hereinafter provided, or in case of breach of any of the covenants or agreements herein contained; then the whole of the unmatured indebtedness hereby secured, or any part thereof, shall at once, at the option (without notice thereof) of any noteholder, become due and payable with the same effect as if said indebtedness had matured by its terms; and on application of any noteholder, said Trustee, with or without process of law, may enter upon and take possession of the premises hereby granted, or any part thereof, and collect and receive all rents, issues and profits thereof, and apply same to payment of the expenses of this trust and of the indebtedness hereby secured; and/or independently of any proceeding to foreclose, any court of competent jurisdiction may upon proper application by said Trustee or any noteholder, without notice, appoint a receiver with the usual powers, to take possession, charge and control of said premises, or any part thereof, lease the same or any part thereof for such term or terms as the court may authorize, and collect and receive all rents, issues and profits thereof and apply the proceeds thereof to payment of all expenses of this trust paid or incurred, and indebtedness secured hereby as the court may direct. A proceeding for receiver only, may, through amendment or supplement, be made a suit for foreclosure also.

Said party of the first part further covenants and agrees, until the indebtedness aforesaid shall be fully paid, to pay all insurance premiums for keeping all buildings which may at any time be on the said premises, during the continuance of said indebtedness,

insured in such company or companies and for such amounts, not to exceed 80% of a fair value of the improvements, as the holder or holders of said note... or the party of the second part may from time to time have the same insured, with loss, if any, payable to said Trustee as its interest may appear, and will permit the said Trustee or any noteholder, as further security for the indebtedness aforesaid, to retain said policies, provided that nothing herein shall be construed as placing on the Trustee or any noteholder the responsibility for having or keeping said buildings insured.

(7) *In case of foreclosure hereof,* said real estate may remain or be placed during the period for redemption, in possession and control of a receiver, who shall apply the rents, issues and profits thereof to the care and protection of said premises and to payment of any deficiency on sale. Application for such receivership may be made by any party in interest, including any purchaser at sale.

A reconveyance of said premises shall be made by the party of the second part to the party of the first part on full payment of the aforesaid indebtedness and all expenses of the trust, the performance of the covenants and agreements herein made by the party of the first part and the payment of the reasonable fees of the party of the second part.

(8) *"Expenses of this trust,"* as herein used, shall include all reasonable expenses of every kind, paid or incurred by said Trustee, or any noteholder in or about the enforcement, protection, insurance collection or release of this security, or in consequence of being a party hereto, or interested herein, and shall include all reasonable costs, charges and fees in and about any and all suits and proceedings to which said Trustee or noteholder may be party by reason of interest in or connection with this Trust Deed, and also the cost of procuring an abstract of title or continuation thereof in case a foreclosure suit is instituted, and shall bear interest at seven per cent per annum from the time same are paid and all such expenses are hereby authorized and made a lien hereunder upon the property and rights hereby conveyed and shall be entitled to payment prior to said note.... In case of foreclosure hereof, such reasonable solicitor's fees shall be not less than.....per cent on the amount or amounts otherwise due and owing under the provisions hereof, and shall be included as a part of the personal indebtedness hereunder in any decree of sale and foreclosure. In case of default for ten days by the party of the first part in the performance of any of the covenants or conditions herein to be performed, said party of the second part or any holder

of any of the principal notes herein described may employ attorneys and counsel and incur reasonable expense without resorting to court action in the first instance in an informal effort to remedy such breach or default by negotiations with the party of the first part or otherwise, and all such reasonable expense and the reasonable fees and charges of the attorneys or counsel in such matter shall be considered an expense under this trust and shall be a further lien and charge upon said premises under this deed, and shall become so much additional indebtedness secured hereby, and allowed in any decree foreclosing this Trust Deed.

(9) *"Noteholder,"* wherever used herein, means the legal holder or holders of said note... or any of them.

(10) *All lawful remedies* for the collection, enforcement or protection of the security, or the indebtedness and expenses hereby secured, whether herein provided for or not, may be pursued concurrently with, and without prejudice to any and all other such remedies, so far as practicable.

(11) *It is also made a covenant hereof,* to run with said property and be binding upon all persons whomsoever, that no person having or claiming any interest in or lien upon said premises, subordinate to the lien hereof, shall be a necessary party to any foreclosure hereof, unless such person shall by name appear of record to have such interest or lien at the time of the filing of the bill in such foreclosure. Any lien or encumbrance by way of mortgage, trust deed or judgment which, after the recording hereof, may be made or suffered by the party of the first part, shall be absolutely subordinate and subject to the lien of this instrument even though the payment of the full amount of said principal indebtedness hereby secured shall not have been completed before the taking effect of said subsequent lien.

(12) *No bona fide, innocent noteholder,* taking before maturity, shall be affected, as to the benefit of this security, by any equities or matters of defense which may exist in favor of any party interested, against any prior holder of the note or notes held by such noteholder.

(13) *Said Trustee* shall not incur any personal liability for acts or omissions hereunder, except in case of its own gross negligence or misconduct, and shall not be obligated or be taken to be obligated to enforce the payment of or collection of any insurance money, but may, in its discretion, adjust, collect or compromise any claim under any policy and sign all receipts or other papers therefor. Said Trustee has not made any examination concerning the title to, location, existence, or condition of the premises above

mentioned, and shall not be, or be taken to be liable in any manner or form in relation thereto.

(14) *The conditions, covenants, provisions and obligations hereof* shall extend to and be obligatory upon the heirs, successors, executors, administrators and assigns of the parties hereto.

Witness the hand..and seal..of said part..of the first part the day and year first above written.

.....(SEAL) .....(SEAL)
.....(SEAL) .....(SEAL)

STATE OF ILLINOIS, }
} ss.
COUNTY OF COOK. }

I, ... a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that .... who ..... personally known to me to be the same person.. whose name ..... subscribed to the foregoing instrument, appeared before me, this day in person, and acknowledged that... he...signed, sealed and delivered the said Instrument as ..... free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this ..... day of .....A. D. 192....

.....
Notary Public.

This acknowledgment should be repeated, to care for the other party or parties to the mortgage.

---

8. Explanation of Essential Clauses, Form 254

(1) States the parties to the indenture, viz., the mortgagor and the trustee, in this instance a trust company.

(2) States, in the form of a preamble, the obligation for which the mortgage is given as security.

(3) Granting clause.

(4) Habendum clause. It limits and defines the estate which the grantee is to have in the property granted.

(5) Trust reservation clause, providing for the equal security of all the notes.

(6) Covenants. These are statements of what the mortgagor agrees to do to protect the noteholders. The sentence beginning, "In case of default in payment," might be set out as a separate covenant. It confers the right to take possession and collect all rents, issues and profits in case

of failure of the mortgagor to meet payment of interest or principal on the notes, or for other specified reasons.
(7) Receivership and reconveyance to mortgagor.
(8) Expenses incurred by trustee, procuring abstract of title, etc.
(9) Meaning of "noteholder."
(10) Lawful remedies.
(11) Subordinate liens.
(12) Rights of bona fide noteholders.
(13) Trustee's liabilities limited.
(14) Extension of terms of trust deed to heirs, etc.

9. Operation of Mortgage

Although under the common law a mortgage serves to convey title to the property, some states, by statutory enactment, have made the mortgage a lien, in which case the action to be brought is a foreclosure of the lien, instead of a foreclosure and sale as is the case under common law procedure. The effect in the two cases is practically the same. Under foreclosure and sale procedure an action is brought to secure a decree directing the sale of the mortgaged property for the benefit of the mortgagee. In case more than one mortgage attaches to the same property, as first, second and third, and the party holding the first mortgage forecloses, the other two mortgagees are parties to the action, but if the party holding the second mortgage forecloses the party holding the first mortgage is not made a party to the action. The interest of the party holding the first mortgage is not affected in this case, but the interest of the party holding the third mortgage is being sold. The buyer of the property would take it subject to the first mortgage and any liens for unpaid taxes.

Along with the mortgage the mortgagor gives the mortgagee a note or bond which is evidence of the mortgagor's promise to repay. The mortgage merely furnishes security for the payment of principal and interest in accordance with the terms of the note.

10. The Corporate Mortgage

Corporate mortgages are sometimes lengthy documents because they represent liens on a great number and variety

of properties, and because the various terms and covenants must be expressed in detail. The note or bond is usually subdivided into a great number of notes or bonds of relatively small denominations, as $100, $500, $1,000 or $10,000 each. To issue a separate mortgage to each of the hundreds or thousands of bondholders would not only involve unnecessary work, but would mean that thereafter the company would be compelled to deal separately with each bondholder, thus leading to endless variations and complications. It has become the custom to place the mortgage in the hands of one or more trustees whose duty it is to act in the interest of all the bondholders. When this is done the mortgage is termed a trust deed. Usually two trustees are appointed, one a trust company, the other an individual, the appointment of an individual as trustee in addition to the trust company being made to facilitate transactions in other states than that in which the trust company is incorporated. As a rule the individual trustee is an officer of the trust company which serves as trustee; hence the policy pursued is likely to be as unified as if there were but one trustee. The powers and responsibilities of the trustee are set out in the mortgage. As a rule the duties of trustees are little more than clerical, consisting in certifying to each bond, recording the trust deed, supervising withdrawals of collateral and the depositing of additional collateral, and in case of default in interest payments, acting to conserve the interests of the bondholders upon the application of those representing a specified percentage in ownership. The trustee is pretty well protected by the provisions of the trust deed, being exempted specifically from various liabilities, perhaps because his compensation is relatively small.

Below is reproduced the first mortgage of the Marion Steam Shovel Company to the Guaranty Trust Company of New York, as trustee. It secures the Company's first Mortgage 6% Twenty-year Sinking Fund Gold Bonds, dated April 1, 1927, due April 1, 1947. Its provisions convey an idea of the detail with which such mortgages are prepared.

FORM 255

FIRST MORTGAGE OF CORPORATION

THE MARION STEAM SHOVEL COMPANY FIRST MORTGAGE

TABLE OF CONTENTS*

	PAGE
Parties	1
Recitals	1
Purpose and Authorization	1
Form of Definitive Bond	2
Form of Interest Coupon	6
Form of Trustee's Certificate	7
Compliance with legal requirements	7
Granting Clauses	7
Real Property	8
Other Property	16
Reservations	17
Raw materials, supplies, etc.	17
Bonds, notes, etc.	17
Habendum	17
Grant in Trust	17

ARTICLE ONE.

FORM, EXECUTION, EXCHANGE AND ISSUE OF BONDS

Sec.	1.	Form of Bonds	19
Sec.	2.	Execution of Bonds	19
		Execution of Coupons	20
		Bonds and Coupons thereto appertaining not validly issued except when authenticated by Trustee	20
		Cancellation of matured coupons before authentication	20
Sec.	3.	Registration and transfer of Bonds	21
Sec.	4.	Ownership of Bonds and Coupons	21
Sec.	5.	Exchangeability	21
		Charge may be made for exchanges	22
Sec.	6.	Temporary Bonds	22

* The Table of Contents is not in the Indenture as executed or recorded.

PAGE

Sec. 7. Limit of authorized issue 23
Authentication and delivery of Bonds upon order of the Company 23
Sec. 8. Mutilated, destroyed or lost Bonds 23

ARTICLE TWO.

Particular Covenants of the Company.

Sec. 9. To pay principal and interest 24
Keeping coupons alive after maturity 24
Sec. 10. Warranty 24
Sec. 11. Taxes; prior liens and charges 25
Sec. 12. Maintenance 25
Sec. 13. Insurance 26
Sec. 14. Recordation 27
Sec. 15. Further assurance 28
Sec. 16. Reimbursement of Pennsylvania, Kentucky, Connecticut, District of Columbia and Massachusetts taxes 28
Sec. 17. Maintenance of office or agency in Borough of Manhattan 29
Appointment of Paying Agent 29
Sec. 18. Keeping of proper books of record and account ... 30
Examination of books and accounts by Trustee ... 30
Filing of audit with W. A. Harriman & Co., Inc. ... 30
Sec. 19. Maintenance of net current assets 30
Definition of net current assets 30
Definition of current assets 31
Definition of current liabilities 31
Sec. 20. Trustee may make advances 32

ARTICLE THREE.

Sinking Fund.

Sec. 21. Covenant to establish sinking fund and make specified payments 32
Security in case of delayed sinking fund payments 33
Bonds may be applied toward sinking fund payments 33
Sec. 22. Redemption of Bonds by operation of the sinking fund 34
Coupons not payable out of sinking fund 34

PAGE

No redemption from sinking fund unless at least $21,000 available for that purpose 34
Sec. 23. Cancellation of Bonds redeemed by operation of sinking fund and Bonds applied toward sinking fund payments 34
Interest on sinking fund moneys 34
Cost of advertising redemption notices, etc. 34

ARTICLE FOUR.

Redemption.

Sec. 24. Bonds are subject to redemption 35
Redemption price 35
Notice 35
Payment to Trustee of necessary funds to redeem. 36
Security in cash of delayed payments to Trustee.. 36
Selection of Bonds in case only a part are to be redeemed 36
Sec. 25. Bonds become due and payable on redemption date 36
Cancellation of Bonds redeemed 37
Deposit of redemption price of all the Bonds with Trustee 37

ARTICLE FIVE.

Release of Property.

Sec. 26. Possession of mortgaged property by Company... 38
Sec. 27. Release of mortgaged property 38
Papers to be delivered to the Trustee:
Request 38
Resolutions 38
Certificate 38
The cash or cash and purchase money obligations, assignment and opinion of counsel.... 39
Sec. 28. Deposit of cash or cash and purchase money obligations, assignment and opinion of counsel.... 39
Value of property in case of exchange 39
Property received in exchange shall be subject to the lien of the mortgage 40
Sec. 29. Change or substitutions in leases, contracts, etc... 40
Sec. 30. Application of proceeds of released property 41
Sec. 31. Disposition of unserviceable equipment 42

PAGE

Sec. 32. Release powers may be exercised by receiver or Trustee 42
Release in case of default..... 42
Sec. 33. Trustee may rely on requests, resolutions, certificates and opinions..... 43
Purchaser not required to ascertain application of proceeds, etc. 43

ARTICLE SIX.

Supplemental Indentures.

Sec. 34. Purposes for which supplemental indentures may be made 43

ARTICLE SEVEN.

Remedies on Default.

Sec. 35. Events of default..... 44
Principal and accrued interest on Bonds may be declared due 45
Default may be waived..... 46
Sec. 36. Entry upon default..... 46
Sec. 37. Upon default, mortgaged property may be sold or a Trustee may enforce rights by judicial proceedings 47
Sec. 38. Trustee's duty to act upon request..... 48
Holder of majority of Bonds may control proceedings 48
Sec. 39. Mortgaged property to be sold as an entity—unless impractical or holders of a majority of Bonds request otherwise 48
Sec. 40. Notice of sale..... 49
Sec. 41. Adjournments of sale..... 49
Sec. 42. Vesting title in purchaser..... 49
Sec. 43. Trustee's receipt sufficient discharge to purchaser. 50
Sec. 44. Principal and interest to become due on sale..... 51
Sec. 45. Application of proceeds of sale..... 51
Sec. 46. Bonds and matured coupons may be applied in payment of purchase price..... 52
Trustee may purchase..... 52
Sec. 47. Covenant to pay Trustee whole amount due upon default 52

PAGE

Upon failure to make payment Trustee may recover judgment for full amount 53
Trustee may recover judgment though other proceedings pending 53
Application of moneys collected by Trustee under this section 54
Sec. 48. Waiver by Company of stay, extension, valuation, appraisement and redemption laws 54
Sec. 49. Upon institution of judicial proceedings, Trustee may have receiver appointed 55
Sec. 50. Remedies cumulative 55
Sec. 51. Trustee may enforce rights without possession of Bonds or coupons 55
Sec. 52. Delay not a waiver of default 56
Sec. 53. Restoration of parties to former position in case of abandonment of proceedings to enforce any right 56
Sec. 54. Right of bondholders to be enforced only for equal benefit of bondholders 56

ARTICLE EIGHT.

Waiver of Individual Liability.

Sec. 55. Incorporators, stockholders, officers and directors exempt from liability 57

ARTICLE NINE.

Evidence of Rights of Bondholders and Ownership of Bonds.

Sec. 56. Execution of instruments by bondholders 58
Proof of execution 56
Proof of ownership and amounts of Bonds 59

ARTICLE TEN.

Concerning the Trustee.

Sec. 57. Trustee not answerable for agents' defaults 59
Indemnity 59
Notice of default 60
Request of bondholder binding upon all future holders of same Bond 60
Recording 60

		PAGE
	Trustee may rely upon certificates, resolutions, opinions, papers, etc.	60
	Trust estate primarily liable for debts, etc., of Trustee	61
	No covenant or representation by Trustee	61
	Not responsible for application of Bonds or proceeds	61
	No duty of Trustee to see to insurance, taxes, assessments or other charges, etc.	61
	Trustee may rely on advice of counsel	61
	Trustee may own Bonds	62
	Treatment of deposited moneys	62
	Compensation	62
Sec. 58.	Notice or demand by bondholders	62
	Notice to or demand upon the Company	62
Sec. 59.	Merger or consolidation of Trustee	63
Sec. 60.	Resignation or removal of Trustee	63
Sec. 61.	Appointment of successor Trustee	64
	Acceptance of appointment by successor Trustee	64
	Vesting mortgaged property in successor Trustee	65
Sec. 62.	Appointment and removal of additional Trustee	65
	Trustee may act upon a certificate	66

ARTICLE ELEVEN.

Consolidation, Merger, Etc.

Sec. 63.	Consolidations, mergers, transfers or conveyances not prohibited	66
	Assumption of obligations by resulting corporation	66
Sec. 64.	Successor corporation to be substituted for Company	67
	Issuance of Bonds by successor corporation	67
	Trustee's duty with respect to the assumption by the successor corporation of the obligations of the Indenture	67

ARTICLE TWELVE.

Miscellaneous.

Sec. 65.	Indenture only for benefit of parties thereto and holders of Bonds	68
Sec. 66.	Meaning of "Trustee" and "Company"	68

Testimonium 68
Signatures and seals..... 69
Acknowledgments 69–70
Certificate concerning mortgage and Bonds..... 71
Recordation data 72

Indenture, dated the first day of April, 1927, between THE MARION STEAM SHOVEL COMPANY, a corporation organized under the laws of the State of Ohio (hereinafter called the "Company"), party of the first part, and GUARANTY TRUST COMPANY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, having its principal office and place of business at No. 140 Broadway, Borough of Manhattan, City and State of New York (hereinafter called the "Trustee"), party of the second part.

WHEREAS, the Company desires to provide funds and acquire property for its lawful corporate purposes, and to that end has duly authorized the issue of its First Mortgage 6% Twenty-Year Sinking Fund Gold Bonds (hereinafter sometimes referred to as the "bonds"), to be secured by a mortgage or deed of trust on the properties of the Company hereinafter described or referred to, such bonds to be dated April 1, 1927, to be payable April 1, 1947, to be issued in coupon form registerable as to principal, and to be redeemable at the option of the Company and by operation of a sinking fund before maturity as hereinafter provided; and

WHEREAS, to provide for the authentication of such bonds by the Trustee and to establish the terms and conditions upon which the same are to be issued and secured, the Company has duly authorized the execution of an indenture in the form of these presents; and

WHEREAS, the bonds, the interest coupons attached thereto, and the Trustee's certificate of authentication to be indorsed on all the bonds, are to be substantially in the following form:

(FORM OF BOND)

No..... $.....

UNITED STATES OF AMERICA
STATE OF OHIO
THE MARION STEAM SHOVEL COMPANY
FIRST MORTGAGE 6% TWENTY-YEAR SINKING FUND
GOLD BOND
DUE APRIL 1, 1947

The Marion Steam Shovel Company, a corporation organized under the laws of the State of Ohio (hereinafter called the "Company"), for value received, hereby promises to pay to bearer, or, if

registered, to the registered holder of this bond, on the first day of April, 1947, ($) in gold coin of the United States of America of or equal to the standard of weight and fineness existing on April 1, 1927, at the office of W. A. Harriman & Co., a co-partnership, having its principal place of business in the Borough of Manhattan, City and State of New York, and to pay interest thereon from April 1, 1927, in like gold coin at said office at the rate of six per cent (6%) per annum, semi-annually on the first day of April and the first day of October in each year, until payment of said principal sum, but, until maturity, only upon presentation and surrender of the annexed interest coupons as they severally mature. Both the principal and interest of this bond are payable without deduction for so much of any Federal income tax as shall not exceed two per cent (2%) thereof per annum, which the Company or the Trustee hereinafter mentioned or any paying agent may be permitted or required to pay thereon or to retain or deduct therefrom under or by virtue of any present or future law or requirement of the United States of America.

It is provided in the Indenture hereinafter referred to that the Company will, upon the conditions, within the time and in the manner therein set forth, reimburse (a) to the holder of any bond issued thereunder who shall be a resident of the Commonwealths of Pennsylvania or Kentucky, or of the State of Connecticut, or of the District of Columbia, when paid by him, any taxes other than estate, succession, income and inheritance taxes assessed under the laws of the said State, Commonwealths or District respectively, upon such bond or upon such holder as a resident of either of said Commonwealths or District or State by reason of his ownership thereof, in any calendar year not in excess in the case of a resident of the Commonwealth of Pennsylvania or of the State of Connecticut of four (4) mills upon each dollar of the principal amount of such bond, or in the case of a resident of the District of Columbia or the Commonwealth of Kentucky of five (5) mills upon each dollar of the principal amount of such bond; and (b) to the holder of any bond issued thereunder who shall be a resident of the Commonwealth of Masachusetts when paid by him, any income taxes assessed by said Commonwealth upon said holder by reason of his ownership of said bond, in any calendar year not in excess of six per cent (6%) of the income derived in that year by said holder from the interest on said bond. Request for such reimbursement shall be made in writing as provided in said indenture within sixty (60) days after the date of payment of any such tax and within six (6) months after such tax shall

have become due and payable. The Company shall not be required on account of any one such bond (or bonds issued in exchange or substitution therefor) in any one calendar year to make reimbursement of taxes imposed under the laws of more than one of said Commonwealths or State or District.

This bond is one of a duly authorized issue of bonds of the Company, known as its First Mortgage 6% Twenty-Year Sinking Fund Gold Bonds, limited to the aggregate principal amount of three million six hundred thousand dollars ($3,600,000), all issued under and equally secured by a certain indenture of mortgage or deed of trust dated April 1, 1927, executed by the Company to Guaranty Trust Company of New York, as Trustee, to which mortgage reference is hereby made for a description of the property mortgaged, the nature and extent of the security, and the rights of the Company, the Trustee and the respective holders of the said bonds with respect thereto.

At the option of the Company all or any part of said bonds may be redeemed on any interest payment date prior to maturity on at least twenty-five days' notice by publication once a week for four successive weeks in one daily newspaper of general circulation in the Borough of Manhattan, City and State of New York, and in one such newspaper in the City of Marion, Ohio, all as provided in said mortgage, at the principal amount and accrued interest, together with the following premiums on the principal amount: a premium of five per cent (5%) of the principal sum if redeemed on or prior to April 1, 1931; a premium of four per cent (4%) of the principal sum if redeemed after April 1, 1931, and on or prior to April 1, 1935; a premium of three per cent (3%) of the principal sum if redeemed after April 1, 1935, and on or prior to April 1, 1939; a premium of two per cent (2%) of the principal sum if redeemed after April 1, 1939, and on or prior to April 1, 1943; a premium of one per cent (1%) of the principal sum if redeemed after April 1, 1943, and on or prior to October 1, 1946; but in each case with interest accrued to the date of redemption. As provided in said mortgage, this bond is also subject to redemption by operation of the sinking fund therein provided at the aforesaid redemption prices.

In case of default by the Company, as set forth in said mortgage, the principal of this bond and of all other bonds of this issue may be declared or may become due and payable in the manner and with the effect provided in said mortgage.

The definitive bonds are issued in denominations of $1,000 and $500. In the manner prescribed in the mortgage and upon payment of the charges therein provided, bonds of either denomination

of the aggregate principal amount of $1,000 or any multiple thereof, with all unmatured coupons attached, may be exchanged for a like aggregate principal amount of bonds of the other denomination, with all unmatured coupons attached.

This bond shall pass by delivery until registered as to principal in the holder's name at the principal office of the Trustee in the Borough of Manhattan, City of New York, such registration being noted hereon. After such registration no further transfer hereof shall be valid unless made at the said office by the registered owner in person or by duly authorized attorney, and similarly noted hereon; but this bond may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored. Such registration shall not affect the negotiability of the attached interest coupons which shall continue to be payable to bearer and transferable by delivery merely.

No recourse shall be had for the payment of any part of either the principal or interest of this bond, or for any claim based hereon or upon the mortgage under which this bond is issued, against any incorporator, or against any past, present or future stockholder, officer or director of the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or in any other manner, all such liability being by the acceptance hereof expressly waived and released.

This bond shall not become obligatory for any purpose until authenticated by the execution by the Trustee of the certificate indorsed hereon.

In witness whereof, The Marion Steam Shovel Company has caused this bond to be signed in its corporate name by its President or a Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, and coupons for interest bearing the facsimile signature of its Treasurer to be attached hereto.

Dated the first day of April, 1927.

The Marion Steam Shovel Company,
By.....,
(SEAL) President.
Attest:
.....Secretary.

(Form of Interest Coupon)

No..... $.....

On the first day of 19, , The Marion Steam Shovel Company will pay to bearer, on the surrender of this

coupon, dollars ($) in United States gold coin, of or equal to the standard of weight and fineness existing on April 1, 1927, at the office of W. A. Harriman & Co., a partnership having a principal place of business in the Borough of Manhattan, City and State of New York, without deduction for so much of any Federal income tax as shall not exceed 2% per annum, being six months interest then due on its First Mortgage 6% Twenty-Year Sinking Fund Gold Bond No. , unless such bond shall have been called for previous redemption.

.....,
Treasurer.

The words "unless such bond shall have been called for previous redemption," will not appear upon the coupon payable October 1, 1927.

(Form of Trustee's Certificate)

This is one of the bonds described in the within mentioned indenture.

Guaranty Trust Company of New York,
Trustee,

By.....
Vice-President.
Assistant Secretary.

Whereas, all things necessary to make the bonds, when authenticated by the Trustee and issued as in this Indenture provided, valid, legal and binding obligations of the Company, and to constitute this Indenture a valid mortgage and deed of trust to secure the payment of the principal and interest of all bonds issued hereunder, have been done and performed, and the creation, execution and delivery of this Indenture and of the bonds have in all respects been duly authorized;

Now, therefore, this Indenture witnesseth: That in consideration of the premises and of the acceptance and purchase of the bonds by the holders thereof, and of the sum of one dollar to the Company duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable considerations, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of all the bonds at any time outstanding under this Indenture, and the faithful performance and observance of all the covenants and conditions hereinafter set forth, the Company has granted, bargained, sold, warranted, released, conveyed, confirmed, assigned, transferred, mortgaged, and set over, and by these presents does grant, bargain, sell, warrant, release, convey,

confirm, assign, transfer, mortgage and set over unto the Trustee, its successors and assigns forever, all the following described property (hereinafter sometimes collectively termed the "mortgaged property"):

TRACT 1:

Situated in the City of Marion, County of Marion and State of Ohio and being part of the east half of the southwest quarter of Section 21, Township 5 South, Range 15 East, and described as follows:

Beginning at a point in the north line of West Center Street, as now located, and 35 feet west of the center line of the main track of The Hocking Valley Railway Company; thence west on the north line of West Center Street to the east line of Kenton Avenue; thence northwestwardly along the east line of Kenton Avenue to the south line of the right of way of the N. Y. P. & O. Railroad; thence following the curve of said N. Y. P. & O. Railroad right of way in a northeasterly direction until it intersects the south line of the right of way of the C. C. C. & St. L. Railroad; thence in an easterly direction along the south line of said C. C. C. & St. L. Railroad right of way to a point 35 feet west of the center line of the main track of The Hocking Valley Railway Company; thence on a curved line parallel with, and 35 feet distant from, the center line of said main track to the north line of West Center Street as now located, being the place of beginning.

TRACT 2:

Situated in the County of Marion, in the State of Ohio and in the Township of Marion, Township 5, Range 15, Section 21 and bounded and described as follows: Beginning at the intersection of the south line of West Center Street in the city of Marion with the west boundary line of the right of way of The Hocking Valley Railway Company; thence east with the south line of said street twenty-two (22) feet and three (3) inches; thence south at right angles to said street line one hundred and seventeen (117) feet to the west boundary line of the right of way of The Hocking Valley Railway Company; thence northwestward with a curve to the left of 2,782 feet radius along said boundary line to the place of beginning, containing about three one hundredths (0.03) of an acre of land, more or less.

TRACT 3:

Situated in the county of Marion, in the state of Ohio and in the city of Marion and bounded and described as follows, to-wit:

Part of the southeast quarter of the southwest quarter of section 21, township 5, range 15, Marion Township, beginning at an iron monument in the western boundary of the right of way of The Hocking Valley Railway Company 584.3 feet north 2° 30′ west from the stone monument at the southeast corner of the southwest quarter of said section 21; thence south 2° 30′ east 230 feet to the northwestern boundary of the original right of way of the Atlantic & Great Western Railroad Company; thence south 45° 15′ west with the boundary line of said original right of way 12 feet to a point 83 feet westward at right angles from the center line of the main track of The Hocking Valley Railway Company; thence northward with a curve to the left of 2,782 feet radius parallel to the center line of the main track of The Hocking Valley Railway and 83 feet westward therefrom 240 feet to the place of beginning, containing two hundredths (0.02) of an acre of land, more or less.

TRACT 4:

Situated in the village of Marion, county of Marion and state of Ohio and known as a strip of land fifty (50) feet wide extending from the Big Island turnpike to the northwest boundary of the land of the New York, Pennsylvania and Ohio Railroad Company, the east side of said strip being parallel to and 83 feet west of the center line of the main track of the Columbus, Hocking Valley and Toledo Railway, containing 8/10 of an acre of land and being the west 50 feet of the tract of about two and thirty hundredths (2.30) acres of land conveyed to the Columbus & Toledo Railroad Company by W. W. Conklin and wife by deed dated June 14, 1877, recorded Vol. 45, page 482, Marion County Records of Deeds.

TRACT 5:

Situated in the city of Marion, county of Marion and state of Ohio and known as being part of the east part of the southwest quarter of section 21, township 5 south, range 15 east and bounded as follows: on the east by lands formerly owned by Edward Huber, on the south and east by lands formerly belonging to the New York, Pennsylvania and Ohio Railroad Company, on the west by lands formerly owned by Charlotte Davids by will of John E. Davids, the premises described herein below, on the north by the center of the Marion and Big Island free turnpike road (now Center Street), containing two (2) acres more or less, being same land willed to Louisa Thompson by W. W. Conklin in his will recorded in Vol. 5, page 571, Records of Wills of Marion County, Ohio.

TRACT 6:

Situated in the city of Marion, county of Marion and state of Ohio and known as being lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and the south part of lot 43, all in John E. Davids "West Marion" Addition to the city of Marion, Ohio; also the original streets and alleys in said "West Marion" Addition adjacent to the aforesaid lots, which streets and alleys have been vacated by the City of Marion, Ohio, and which said lots in said plat were vacated by action in the Common Pleas Court of Marion County, Ohio.

TRACT 7:

Situated in the city of Marion, county of Marion and state of Ohio and bounded and described as follows: Known as being lots 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366 and 2367 in Orchard Mound Addition to said city of Marion; also the streets and alleys adjoining said lots, which were vacated by the Council of the City of Marion, Ohio, and which said lots in said plat were vacated by action in the Common Pleas Court of Marion County, Ohio.

TRACT 8:

Situated in the city of Marion, county of Marion and state of Ohio, viz: Beginning on the northerly line of Howard Street (also known as Bennett Street) in said city, at a point fifty (50) feet northwesterly from the center line of the old abandoned main track of the Nypano Railroad as measured at right angles to said center line; thence northeasterly along a line drawn parallel with and fifty (50) feet distant northwesterly from said center line of said main track three hundred and thirty-two (332) feet to a point; thence southeasterly in a direct line one hundred and two (102) feet to a point of intersection with the westerly line of lands or right of way of The Columbus, Hocking Valley and Toledo Railway Company; thence southwesterly along a line drawn parallel with and fifty (50) feet distant southeasterly from said center line of said main track two hundred and twenty-two (222) feet to said northerly line of said street; thence westerly along said northerly line of said street one hundred and thirty-seven (137) feet to the point of beginning, containing sixty-three hundredths (.63) of an acre of land, more or less; tract No. 8 being the same premises conveyed by The Nypano Railroad Company and Erie Railroad Company, Lessee, to The Marion Steam Shovel Company by quit-claim deed dated April 30, 1901,

recorded in Vol. 93, page 118 of the Deed Records of Marion County, Ohio.

TRACT 9:

Situate in the city of Marion, county of Marion and state of Ohio, to-wit: Beginning on the northerly line of Howard Street (also known as Bennett Street) in said city at a point fifty (50) feet northwesterly from the center line of the old abandoned main track of the Nypano Railroad as measured at right angles to said center line of said main track; thence easterly along said northerly line of said street one hundred and thirty-seven (137) feet to a point fifty (50) feet distant southeasterly from said center line of said main track, as measured at right angles thereto; thence southwesterly along a line parallel with and fifty (50) feet distant southeasterly from said center line of said main track to the easterly line of David Street; thence northerly along said easterly line of David Street to a point fifty (50) feet distant northwesterly from said center line of said main track as measured at right angles thereto; thence northeasterly along a line parallel with and fifty (50) feet northwesterly from said center line of said main track to the point of beginning, containing one and nineteen hundredths (1.19) acres of land, more or less; tract No. 9 being the same premises conveyed by The Nypano Railroad Company and Erie Railroad Company, Lessee, to The Marion Steam Shovel Company by quit-claim deed dated June 3, 1901, recorded in Vol. 92, page 536 of the Deed Records of Marion County, Ohio.

TRACT 10:

Situate in the county of Marion, in the state of Ohio and in the city of Marion and bounded and described as follows, to-wit:

Known as being a part of the east half of the northwest quarter of section 28, township 5 south, of range 15 east, beginning at the intersection of the north line of section 28 and the east line of Davids Street; thence south twenty feet to the place of beginning; thence east three hundred and twenty-nine and one-half feet to the west line of the right of way of the N. Y. P. & O. Ry. Co.; thence southwest along said west right of way line to the east line of Davids Street; thence north on the east line of Davids Street three hundred and eight and seven-tenths feet to the place of beginning; tract No. 10 being the same premises conveyed by Daniel W. Murphy and A. C. Edmondson to The Marion Steam Shovel Company by warranty deed dated July 13, 1901, recorded in Vol. 93, page 488 of the Deed Records of Marion County, Ohio.

TRACT 11:

Situate in the city of Marion, county of Marion and state of Ohio and known as being lots numbers 26, 27 and 28 in John E. Davids "West Marion" Addition; the title to said lots having been registered in the name of The Marion Steam Shovel Company in cause No. 16772 filed in the Common Pleas Court of Marion County, Ohio, and said registration being evidenced by original certificates of title No. 114 found in Vol. 1 of the Register of Title at page 143, Recorder's office, Marion County, Ohio.

TRACT 12:

Situate in the city of Marion, county of Marion and state of Ohio and known as being lots numbered 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 in John E. Davids "West Marion" Addition; also the following, being the streets and alleys adjacent to said lots as originally platted in said addition, which said streets and alleys have been vacated as such by the City of Marion, Ohio.

Tracts No. 2 to 12 hereinbefore described may likewise be described and are included in the following consolidated description:

Situate in the city of Marion, county of Marion and state of Ohio and beginning at the intersection of the east line of David Street with the south line of Center Street; thence in an easterly direction and on the south line of Center Street to the point of intersection of the south line of Center Street with the west line of the right of way of The Hocking Valley Railway Company; thence in a southerly direction along the west line of the right of way of The Hocking Valley Railway Company to the intersection of said west line of the right of way of The Hocking Valley Railway Company with the north line of Columbia Street; thence in a westerly direction along the north line of Columbia Street to the point of intersection of said north line of Columbia Street with the east line of David Street; thence in a northerly direction along the east line of David Street to the intersection of said east line of David Street with said south line of Center Street, and being the place of beginning.

TRACT 13:

Situate in the county of Marion, in the state of Ohio, and in the city of Marion and bounded and described as follows:

Known as being lots numbers 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137,

3138, 3139, 3140, 3141, 3142 and 3143 in Silas Uncapher's Second Addition to the city of Marion, Ohio.

TRACT 14:

Situate in the county of Marion, in the state of Ohio, and in the city of Marion and bounded and described as follows:

Known as being lots numbers 5869, 5879, 5871, 5872, 5873, 5874, 5875, 5876, 5877, 5878, 5870, 5880, 5881, 5882 and 5883 in Wyman Addition to the city of Marion, Ohio.

TRACT 15:

Situate in the county of Marion, in the state of Ohio and in the township of Marion and bounded and described as follows: Beginning at a stone in the south line of the right of way of the old N. Y. P. & O. Railway Company, which stone is southwesterly of the intersection of said south line with the center of the road running north and south on the line between the east and west half of said quarter section (now called Uncapher Avenue) seventeen and five hundredths (17.05) chains; thence easterly four and thirty-six hundredths (4.36) chains; thence south three and eighty-six hundredths (3.86) chains; thence west eight and twelve hundredths (8.12) chains to a stone in the south line of the right of way of said railroad; thence northeasterly along the south line of said right of way five and twenty-four hundredths (5.24) chains to the place of beginning, containing two and forty-one hundredths (2.41) acres, more or less.

Also, situate in same section, township and range and described as follows: beginning at a stone in the south line of the right of way of the old N. Y. P. & O. Railway, which stone is southwesterly of the intersection of said south line with the center of the road running north and south on the line between the east and west half of said quarter section (now called Uncapher Avenue) fourteen and nine-tenths (14.9) chains; thence in a southwesterly direction along the south line of said railroad two and ninety-six hundredths (2.96) chains to a stone; thence easterly four and thirty-six hundredths (4.36) chains to a corner; thence north two and ten hundredths (2.10) chains; thence westerly to the place of beginning, containing one-half acre, more or less.

TRACT 16:

Situate in the county of Marion, in the state of Ohio, and in the city of Marion and bounded and described as follows:

Being part of sections 28 and 29, township 5 south, range 15 east, beginning at the southeast corner of a five and forty-four

hundredths (5.44)-acre tract of land deeded by Joseph Uncapher and wife to Daniel Uncapher (see Deed Record 59, page 77); thence west along said south line of said five and forty-four hundredths (5.44)-acre tract of land sixty-three and forty-four hundredths (63.44) rods to a stone in the line of the right of way of the New York, Pennsylvania and Ohio Railroad; thence in a southwesterly direction along said right of way to a stone in the line of land deeded to Miram L. Uncapher now owned by Christopher S. Lippincott and Samuel B. Lippincott in section 29; thence east one hundred thirty-four and sixty-four hundredths (134.64) rods to a stone in center of road (now Uncapher Ave.); northeast corner of land formerly owned by John A. Uncapher, now owned by Christopher S. Lippincott and Samuel B. Lippincott; thence north along center of said road (now Uncapher Ave.) to place of beginning, containing forty-three (43) acres, be the same more or less, being 34.7 acres in section 28 and 8.3 acres in section 29.

Tract 17:

Situated in the city of Marion, county of Marion and state of Ohio, and described as follows: Being all that part of the southeast quarter of the northeast quarter of section 29, township 5 south, range 15 east, lying north and west of the N. Y. P. & O. R. R.; also, all that part of the northeast quarter of the southeast quarter of said section lying north and west of said N. Y. P. & O. R. R.; also, situated in section 28, township 5 south, range 15 east, beginning at the point of intersection of the north line of the southwest quarter of the northwest quarter of said section and the center line of Latourette Street; thence south on said line to the north and west line of the N. Y. P. & O. Railroad; thence northeast along said west line of said railroad to a point due south of the west line of an alley running north and south between Latourette Street and Fies Avenue; thence north to a point in the north line of the southwest quarter of the northwest quarter of the said section; thence west to the place of beginning, containing in all 59.82 acres, more or less.

Also situate in the city of Marion, county of Marion and state of Ohio, and described as follows: Being part of the northwest quarter of section 28, township 5 south, range 15 east, bounded and described as follows: Beginning at a point where the west line of Fies Avenue, extended, in the city of Marion, Ohio, intersects the north right of way line of the N. Y. P. & O. Ry. Company; thence southwest along the north line of the N. Y. P. & O. Ry. Company to a point where the west line of the first

alley west of Fies Avenue, and running parallel therewith, extended, intersects said north line of the N. Y. P. & O. Ry. Company; thence northward on the west line of said alley extended to the south line of Glenwood Addition to the city of Marion, Ohio; thence east along the south line of Glenwood Addition to the west line of Fies Avenue; thence south on the west line of Fies Avenue to the place of beginning, containing about one-half (½) acre of land.

Tract 18:

Situated in the city of Marion, county of Marion and state of Ohio and being known as lots numbers 11900, 11901, 11902, 11903, 11912, 11913, 11914, 11915, 11916, 11917, 11918, 11920, 11921, 11922, 11923, 11924, 11925 and 11926 in Clover-Dale Addition to the City of Marion, Ohio.

Also all plants, buildings, factories, offices, fixtures, engines, boilers, machinery, belting, shafting, cranes, tanks, machine shops, conveyors, pipes and fittings, dynamos, generators, switchboards, electrical apparatus, all patterns for the manufacture of all types and styles of steam, gasoline and electrical shovels, cranes and other products, and all tools, implements, apparatus, appliances, equipment, and accessories and all other property of every description owned by the Company in the City of Marion, Ohio, and now or at any time hereafter located on or appurtenant to or used in the operation of or in connection with any real property hereinabove described, and also all such plants and all other such property at any time located on or appurtenant to or used in the operation of or in connection with any real property hereafter subjected to the lien of this Indenture.

Also all improvements, additions, betterments and extensions now existing or which may hereafter be made or acquired of, to or for the property above described located in Marion, Ohio.

Also all rights of way, interests or easements in real estate now owned, possessed or enjoyed by the Company and appurtenant to or used in connection with the property above described located in Marion, Ohio.

The apparatus, appliances, equipment and accessories now or at any time or times hereafter conveyed, transferred or assigned pursuant to this Indenture shall be real estate for all purposes of this Indenture and shall be held and taken to be fixtures and appurtenances of the property hereby conveyed.

The effect of these general words of description shall not be deemed to be lessened or impaired by any specific descriptions hereinabove contained.

TOGETHER with all and singular the tenements, hereditaments and appurtenances belonging or in any way appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate right, title, interest and claims whatsoever at law or in equity, which the Company now has or which it may hereafter acquire in and to the aforesaid property and every part and parcel thereof.

It is expressly provided, however, that nothing in this Indenture contained shall be deemed to include in the property mortgaged or pledged (1) raw material, supplies, storeroom contents, manufactured products and products in the process of manufacture, or any other personal property (except as expressly granted) or (2) any bonds, notes, evidences of indebtedness, shares of stock or other securities.

TO HAVE AND TO HOLD all and singular the said premises and property unto the Trustee and its successors and assigns forever;

IN TRUST, NEVERTHELESS, subject to the provisions of this Indenture, for the equal and proportionate benefit, security and protection of all holders of bonds and interest coupons issued or to be issued under and secured by this Indenture, without preference, priority or distinction as to lien or otherwise of any bond over any other bond by reason of priority in the time of issue, sale or negotiation thereof or otherwise for any cause whatsoever, so that each and every bond issued hereunder shall have the same right, lien and privilege under and by virtue of this Indenture, as if all had been dated, issued, sold and negotiated simultaneously with the execution and delivery of this Indenture (subject, however, to the provisions of Section 9 hereof).

Provided, however, that these presents are upon the express condition, that if the Company, its successors or assigns, shall well and truly pay or cause or secure to be paid the principal of the bonds (and premium, if any) and the interest due or to become due thereon, at the times and in the manner mentioned in said bonds and interest coupons respectively, according to the true intent and meaning thereof, or shall provide for such payments by depositing with the Trustee at any time for the payment of the bonds and coupons the entire amount due thereon for principal (and premium, if any) and interest, and shall well and truly keep, perform and observe all the covenants and conditions in this Indenture expressed to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted

shall cease, terminate and be void, and the Trustee, in such case, on demand of the Company and at the cost and expense of the Company, shall execute and deliver to the Company such deeds, satisfactions, discharges or other instruments as shall be requisite to discharge the lien hereof and to reconvey to or to revest in the Company, or in whomsoever shall lawfully be entitled thereto, all the mortgaged property, and also shall redeliver to the Company, or to whomsoever shall lawfully be entitled thereto, all personal property which then may be held by the Trustee, and shall execute and deliver proper instruments of assignment and transfer thereof, and shall redeliver any cash to which it shall be entitled; otherwise this Indenture to be and remain in full force and effect.

And it is further covenanted and agreed that the bonds are to be issued, authenticated and delivered and the mortgaged property is to be held by the Trustee, subject to the following further covenants, conditions and trusts, and the Company, for itself, its successors and assigns, does hereby covenant and agree to and with the Trustee and its successors in said trust, for the benefit of those who shall hold said bonds and interest coupons, as follows:

ARTICLE ONE.

Form, Execution, Exchange and Issue of Bonds.

Section 1. The bonds, coupons and Trustee's certificate shall be substantially in the form hereinabove set forth. The bonds shall be known as the Company's First Mortgage 6% Twenty-Year Sinking Fund Gold Bonds, shall be dated April 1, 1927, and payable April 1, 1947, and shall bear interest at the rate of six per cent. (6%) per annum, payable semi-annually on the first day of April and the first day of October in each year until payment of the principal sum, both principal and interest to be payable in gold coin of the United States of America of or equal to the standard of weight and fineness existing on April 1, 1927.

The bonds shall be issued in coupon form payable to bearer, with interest coupons attached, registerable as to principal only, in the denomination of $1000, numbered consecutively M-1 and upwards, and in the denomination of $500, numbered consecutively D-1 and upwards. The bonds may contain such specifications or bear such legends as may be required to conform to any rule of any stock exchange or any usage with respect thereto.

Section 2. All bonds shall be signed on behalf of the Company in its corporate name by its President or a Vice-President, and impressed with its corporate seal, attested by its Secretary

or an Assistant Secretary. Bonds so executed may from time to time be delivered to the Trustee for authentication, and the Trustee shall authenticate and deliver the same in accordance with the provisions of this Indenture, and not otherwise.

In case any of the officers of the Company who shall have signed or sealed any of the bonds shall cease to be such officers before the bonds shall have been actually authenticated or issued, such bonds may nevertheless be adopted by the Company, and shall be authenticated by the Trustee and may be issued by the Company, as though the persons who had signed or sealed such bonds had not ceased to be such officers, and also any such bonds may be signed and sealed in behalf of the Company by such person as at the actual date of the execution of the bond shall be the proper officer of the Company, although on the date of the bond any such person shall not have been such officer.

The interest coupons to be attached to the bonds shall be executed with the facsimile signature of the present or any future Treasurer of the Company; and the Company may adopt and use for that purpose the facsimile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually authenticated or issued.

Only such bonds as shall bear thereon indorsed a certificate of authentication in the form hereinbefore recited, executed by the Trustee, shall be secured by this Indenture or be entitled to any right, benefit or security hereunder. No bond and no coupon thereunto appertaining shall be valid or obligatory for any purpose until such certificate shall have been duly indorsed on such bond; and such authentication by the Trustee upon any such bond shall be conclusive evidence that the bond so authenticated has been duly issued hereunder and that the holder is entitled to the benefit and security of the trust hereby created.

The Trustee shall not authenticate or deliver any bonds unless all coupons thereon then matured shall have been detached and cancelled.

SECTION 3. The Company will keep at the principal office of the Trustee in the Borough of Manhattan, City of New York, a sufficient register or registers of bonds, and upon presentation for such purpose at such office the Company will under such reasonable regulations as it may prescribe register therein as to principal any bonds so presented to it.

The holder of any bond may have the ownership thereof registered at said office, such registration being noted on the bond by the Trustee acting as bond registrar. After such registration,

no further transfer of such bond shall be valid unless made at the said office by the registered owner in person or by duly authorized attorney, and similarly noted on the bond; but the same may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. Bonds shall continue to be subject to successive registrations and transfers to bearer, at the option of their respective holders; but no registration of any bond shall affect the negotiability of the interest coupons pertaining thereto, which shall continue to be payable to bearer upon presentation and surrender, and transferable by delivery merely.

SECTION 4. The Company and the Trustee and the Paying Agent may deem and may treat the bearer of any bond hereby secured which shall not at the time be registered as to principal as hereinabove provided, and the bearer of any coupon for interest on any bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and neither the Company nor the Trustee nor the Paying Agent shall be affected by any notice to the contrary.

The Company and the Trustee and the Paying Agent may deem and treat the person in whose name any bond issued hereunder shall be registered as to principal upon the books of the Company, as herein provided, as the absolute owner of such bond for the purpose of receiving payment of or on account of the principal of such bond and for all other purposes except to receive payment of interest represented by outstanding coupons.

SECTION 5. Whenever any bond or bonds of one denomination together with all unmatured coupons thereto appertaining of the aggregate principal amount of $1,000 or any multiple thereof, shall be surrendered to the Company for exchange for a like aggregate principal amount of bonds of the other denomination, the Company shall execute, and the Trustee shall authenticate and deliver in exchange therefor, a like aggregate principal amount of bonds of the other denomination of numbers not contemporaneously outstanding, bearing all unmatured coupons. All such exchanges shall be made at the principal office of the Trustee in the Borough of Manhattan, City of New York.

In every case of such exchange the Trustee forthwith shall cancel the surrendered bond (and coupons, if any) and shall deliver the same to the Company.

For any exchange of bonds the Company may require the payment of a sum sufficient to reimburse it for any stamp tax or governmental charge, and in addition thereto the further sum of

not exceeding two dollars for each new bond issued upon such exchange.

SECTION 6. Until definitive bonds are prepared and ready for delivery, the Company may execute, and thereupon the Trustee shall authenticate and deliver, in lieu of such definitive bonds, one or more temporary bonds, typewritten or printed, with or without interest coupons, of any denomination or denominations, substantially of the tenor of the definitive coupon bonds. Every such temporary bond shall be authenticated by the Trustee in substantially the same manner, and with like effect, as the definitive bonds. When definitive bonds are prepared and ready for delivery, all or any of such temporary bonds may be surrendered in exchange therefor, and, upon the cancellation thereof, the Trustee shall authenticate and deliver in exchange therefor, without expense to the holder, an equal aggregate principal amount of definitive bonds. The temporary bonds so surrendered and cancelled shall from time to time be delivered to or upon the written order of the Company. Until exchanged for definitive bonds as above provided, the temporary bonds shall in all respects be entitled to the benefit and security of this Indenture as bonds issued and authenticated hereunder; and interest shall be paid thereon only upon presentation thereof for the notation of such payment thereon. After the definitive bonds have been prepared and are available for exchange for temporary bonds, the Company shall be obligated to pay interest in respect of any temporary bond only upon surrender of such temporary bond in exchange for a definitive bond or bonds as hereinabove provided.

SECTION 7. The aggregate principal amount of bonds which may be executed by the Company and authenticated by the Trustee is limited to the sum of Three million six hundred thousand dollars ($3,600,000) at any one time outstanding (except as provided in Section 8 hereof). Forthwith upon the execution and delivery of this Indenture, or from time to time thereafter, whether before or after the recording or filing hereof, bonds in the aggregate principal amount of Three million six hundred thousand dollars ($3,600,000) may be executed by the Company and delivered to the Trustee for authentication, and thereupon shall be authenticated and delivered by the Trustee upon the written order of the Company signed by its President or any Vice-President or its Treasurer or any Assistant Treasurer.

SECTION 8. In case any definitive or temporary bond issued under this Indenture shall become mutilated or be destroyed or lost, the Company in its discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new bond of like tenor,

in exchange and substitution for such mutilated bond or in lieu of and substitution for such destroyed or lost bond. In case of destruction or loss, the applicant for a substituted bond shall furnish to the Company and the Trustee evidence to their satisfaction, in their discretion, of the destruction or loss of such bond and of the ownership thereof, and also such security or indemnity as may be required by the Company and the Trustee. Upon the issue of any substituted bond, the Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge or other expense connected therewith, and also a further sum not exceeding the cost of preparation of each bond so issued in substitution.

ARTICLE TWO.

Particular Covenants of the Company.

Section 9. The Company will promptly pay or cause to be paid the principal and interest of all bonds at any time issued hereunder according to the terms hereof. As the coupons annexed to said bonds are paid they shall be cancelled. Coupons shall not be kept alive after maturity by extension thereof or by the purchase thereof, by or on behalf of the Company. No coupon belonging to any bond hereby secured, which in any way at or after maturity, shall have been transferred or pledged, separate or apart from the bond to which it relates, or which shall in any manner have been kept alive after maturity by extension or by the purchase thereof by or on behalf of the Company, shall be entitled, in case of a default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of the principal of all the bonds issued hereunder and of all coupons not so transferred, pledged, kept alive or extended.

Section 10. At the time of the delivery of this Indenture, the Company has a good and sufficient estate in fee simple or in possession absolute, according to the nature of the property conveyed, in and to all of the property described in the granting clauses of this Indenture, and has good right and lawful authority to mortgage the same for the purposes herein expressed; and said premises and property are free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto prior to this Indenture, except as set forth in the granting clauses hereof and except taxes for the current year and taxes or assessments not yet due. The Company will maintain and preserve the lien of this Indenture so long as any of the bonds issued hereunder are outstanding, and will forever warrant and

defend the title to the property described as being mortgaged hereby against all claims and demands of any persons whatsoever.

SECTION 11. The Company will duly pay and discharge or cause to be paid or discharged, as the same shall become due and payable, all real estate and personal property taxes, water rates, assessments and governmental and other charges lawfully levied and imposed upon the mortgaged property, including the earnings and business of the Company, and will duly observe and conform to all valid requirements of any governmental authority relative to any of the property or rights at any time covered hereby; and it will not suffer any mechanic's, laborer's, statutory or any other lien, charge or encumbrance to be hereafter created and remain upon said property, or any part thereof, or the income therefrom, prior to the lien of this Indenture; provided, however, that the Company shall not be required to pay any such tax, assessment, lien or charge so long as the Company in good faith shall contest the validity thereof.

SECTION 12. The Company will at all times maintain, preserve and keep, or cause to be maintained, preserved and kept, the mortgaged property and every part thereof, with the appurtenances, in good repair, working order and condition, and from time to time will make or cause to be made all needful and proper repairs and renewals, replacements and substitutions, so that at all times the value of the security of the bonds issued hereunder and the efficiency of the property hereby mortgaged shall be fully preserved and maintained.

SECTION 13. The Company will keep or cause to be kept all the plants, properties, buildings, equipment, machinery, apparatus and other property subject to the lien hereof, as are usually insured by companies operating like properties, insured in good and responsible insurance companies against any risk customarily insured against by companies engaged in a similar business, and in the same manner and to the same extent. The policies of insurance shall provide that in the case of any loss arising out of any one fire or disaster in excess of $100,000, all insurance shall be paid to the Trustee as its interest may appear. The Company will furnish to the Trustee annually, or oftener if the Trustee shall so request, a schedule of the amount and character of the insurance in force and a full list of the companies issuing policies of insurance on said mortgaged property, setting forth the character and amount of each policy. The Trustee shall be under no obligation or duty to obtain any such schedule, and shall have no duty with respect thereto, except to exhibit the same to any holders of bonds desiring to inspect the same. In case of any

loss in respect to any of the mortgaged property covered by any policy of insurance, any appraisement or adjustment of such loss and settlement and payment of indemnity therefor, which shall be agreed upon between the Company and any insurance company, shall be accepted by the Trustee.

In case of loss or damage to any of the mortgaged property, the proceeds of any such insurance shall be promptly applied to the repair or replacement of the property destroyed or damaged or to one or more of the purposes provided in Section 30 hereof with respect to the proceeds of released property; PROVIDED, that, in any case where the proceeds of any such insurance shall amount to a sum in excess of $100,000 in the aggregate on account of any one loss, all such moneys shall be promptly deposited with the Trustee.

All insurance moneys received by the Trustee shall be held by it as part of the mortgaged property and shall be paid out from time to time upon the written order of the Company (1) for the purpose of providing the Company with funds necessary to pay the cost of repair or replacement of the property destroyed or damaged, or (2) for one or more of the purposes provided in Section 30 hereof with respect to the application of the proceeds of released property.

Upon any application for withdrawal of proceeds of insurance deposited with the Trustee under clause (1) of this Section, the Company shall deliver to the Trustee the verified certificate of the President or a Vice-President of the Company describing in reasonable detail the repairs or replacements for which such moneys are to be expended, and the cost thereof. In case such application is made under clause (2) of this Section, the Company shall comply with the requirements of Section 30 hereof in respect to an application for the withdrawal of the proceeds of released property.

Anything herein contained to the contrary notwithstanding, the Company may in whole or in part in lieu of insuring or causing to be insured such property, maintain a system of self insurance which will accord with approved practices of similar Companies maintaining such systems. The Company at any time and from time to time at the request of the Trustee will furnish to the Trustee full details and information in writing of any such system of self insurance which is then in effect or the adoption of which is then contemplated by it.

SECTION 14. The Company will cause this Indenture and all indentures supplemental hereto to be recorded and filed, and to be duly re-recorded and refiled in such manner and in such places

as may be required by law in order fully to preserve and protect the security of the bondholders and the lien and rights of the Trustee in respect to all property at any time subject to the lien hereof, will pay any and all taxes and charges legally due in connection with all such recording and filing, and will do whatever else may be necessary in order fully to perfect and continue the lien of this Indenture upon the mortgaged property.

SECTION 15. The Company, on the written demand of the Trustee at any time, will make, execute, acknowledge and deliver, or cause to be made, executed, acknowledged and delivered, to the Trustee any and all such further acts, deeds and assurances as may be reasonably required for effectuating the intention of this Indenture and for the better assuring and confirming to the Trustee, upon the trusts and for the purposes herein expressed, all the mortgaged property, whether now owned or possessed by the Company or hereafter acquired.

SECTION 16. The Company will reimburse (a) to the holder of any bond issued hereunder who shall be a resident of the Commonwealths of Pennsylvania or Kentucky, or of the State of Connecticut, or of the District of Columbia, when paid by him, any taxes other than estate, succession, income and inheritance taxes, assessed under the laws of the State, Commonwealths or District, respectively, upon such bond or upon such holder as a resident of either of said Commonwealths or District or State by reason of his ownership thereof, in any calendar year not in excess in the case of a resident of the Commonwealth of Pennsylvania or of the State of Connecticut of four (4) mills upon each dollar of the principal amount of such bond, or in the case of a resident of the District of Columbia or of the Commonwealth of Kentucky of five (5) mills upon each dollar of the principal amount of such bond; and (b) to the holder of any bond issued hereunder who shall be a resident of the Commonwealth of Massachusetts when paid by him, any income taxes assessed by said Commonwealth upon said holder by reason of his ownership of said bond, in any calendar year not in excess of six per cent. (6%) of the income derived in that year by said holder from the interest on said bond.

Such reimbursement shall be made upon the written request of such holder thereof stating the number of the bond and the denomination thereof and setting forth that he was a holder thereof and a resident of such Commonwealths or District or State, respectively, on the date when such tax was assessed, and that he was assessed and did pay such tax, and upon submission, if required by the Company, of receipted tax bill and/or other documentary evidence establishing the payment of such tax. Such

request shall be mailed to the Company addressed to it at Marion, Ohio, (or to such other address as it may from time to time designate in writing to the Trustee) within a period of sixty (60) days after the date of the payment of such tax by such holder and within six (6) months after such tax shall have become due and payable. The Company shall not be liable to reimburse such holder for any such tax unless such request be made and evidence submitted within the said period of time, and it shall in no event be required directly or indirectly to reimburse any such holder for any interest or penalty assessed upon or paid by him in addition to the amount of such tax as originally assessed. The Company shall not be required on account of any one such bond (or bonds issued in exchange or substitution therefor) in any one calendar year to make reimbursement of taxes imposed under the laws of more than one of said Commonwealths or District or State. On receipt of any such request for reimbursement and submission of such evidence, the Company shall within thirty (30) days thereafter, pay to the bondholder making such request a sum sufficient to reimburse such holder, as herein provided.

SECTION 17. The Company will maintain an office or agency in the Borough of Manhattan, City and State of New York, while any of said bonds are outstanding, where notices, presentations and demands to or upon the Company in respect of said bonds or their coupons may be given or made. In default of any such office or agency presentation and demand may be made and notice served at the office of the Trustee.

The Company hereby appoints W. A. Harriman & Co., a copartnership having its principal place of business in the Borough of Manhattan, City and State of New York, and its successors as its paying agent (hereinafter sometimes referred to as the Paying Agent), at whose office all bonds and coupons issued hereunder shall be payable. Said appointment is irrevocable so long as any of the bonds are outstanding hereunder.

SECTION 18. The Company at all times will keep or cause to be kept proper books of record and account in which full, true and correct entry will be made of all dealings, business and affairs of the Company and its subsidiaries, including proper and complete credits to the proper accounts covering property worn out, abandoned or sold, all in accordance with the generally recognized rules and process of accounting employed by responsible corporations engaged in a business similar to that transacted by the Company.

The Trustee may, and if requested in writing by the holders of at least twenty-five per cent. (25%) in principal amount of

the bonds issued hereunder and then outstanding and provided with funds necessary therefore shall, at any time or from time to time cause the books and accounts of the Company to be examined, and audited by certified public accountants selected by the Trustee.

The Company will within four (4) months after the close of each fiscal year file with W. A. Harriman & Co., Inc., an audit of the books of account of the Company made by an accountant or accountants selected by the Company and satisfactory to W. A. Harriman & Co., Inc., showing in reasonable detail the financial condition of the Company as of the close of the fiscal year next preceding and the net earnings of the Company for such fiscal year.

SECTION 19. The Company covenants that it will not declare or pay any dividends upon its common stock if after the declaration and payment of such dividends the net current assets (as hereinafter defined) of the Company would be reduced to an amount less than the principal amount of all bonds issued hereunder and then outstanding.

As used in this Indenture the phrase "net current assets" shall mean the amount remaining after deducting from the amount of current assets (as hereinafter defined) the amount of current liabilities (as hereinafter defined).

"Current assets" shall include the following:

(*a*) Cash on hand and in bank.

(*b*) United States Government obligations taken at their current market value.

(*c*) Other good and readily marketable securities, taken at their current market value.

(*d*) Good and collectible accounts, bills and notes receivable and trade acceptances received from customers in the ordinary course of business, not over sixty (60) days past due and maturing within one year from the date thereof; and also items of like character which mature within more than one year and less than two years from the date thereof; provided, that such last mentioned items maturing within more than one year and less than two years may only be included as current assets up to but not exceeding in the aggregate thirty-three and one-third per cent. (33-1/3%) of the total current assets under this clause (*d*) exclusive of such items maturing within more than one year and less than two years, and provided, further, that no such items maturing in more than one year from the date thereof shall be included as current assets unless payment of the same is adequately

secured by pledge, mortgage, vendors' or other lien on products sold or on other property which itself would fall within one of the clauses of this definition of current assets.

(*e*) Inventories of raw materials and supplies, work in process and finished products taken at cost or market value (after reasonable deduction for obsolete machines or parts, if any) whichever is lower.

As used in this Indenture the words "current liabilities" shall mean all the obligations and liabilities, due or accrued, maturing within one year and all such obligations and liabilities maturing in more than one year and not later than the date of the last maturing current asset then included by the Company under clause (*d*) of this Section; provided, that, obligations maturing in more than one year from the date thereof and secured by mortgage shall not be deemed current liabilities.

SECTION 20. If the Company shall fail to perform any of the covenants contained in Sections 11, 12, 13 or 14 hereof, the Trustee may, but shall not be required to (unless requested in writing so to do by the holders of ten per cent (10%) in principal amount of the bonds then issued and outstanding and provided with the funds necessary therefor), make advances to perform the same in its behalf; and all sums so advanced shall at once be repayable by the Company, and shall bear interest at the rate of six per cent (6%) per annum until paid, and shall be secured hereby, having the benefit of the lien hereby created in priority to the indebtedness evidenced by the bonds and coupons; but no such advance shall be deemed to relieve the Company from any default hereunder.

ARTICLE THREE.

SINKING FUND.

SECTION 21. The Company covenants and agrees to create a sinking fund for the retirement of bonds issued hereunder by semi-annual payments which shall be sufficient to retire all bonds issued hereunder on or before the date of maturity of the bonds. For such purposes the Company covenants and agrees that so long as any bonds are outstanding hereunder it will pay semi-annually to the Trustee in the Borough of Manhattan, City and State of New York, on or before February 23 and August 25 in each year, beginning with August 25, 1927, and ending with February 23, 1947, the following sums in cash as a sinking fund for the retirement of bonds issued hereunder, as hereinafter in this Article provided:

(*a*) the sum of Fifty thousand one hundred and fifty Dollars ($50,150); plus

(*b*) an amount equal to three per cent (3%) of the aggregate principal amount of (1) all bonds theretofore delivered to the Trustee in payment of any prior sinking fund payment in lieu of cash as hereinafter provided and of (2) all bonds previously redeemed or called for previous redemption by operation of the sinking fund;

provided, however, that the sinking fund payment to be made on February 23, 1947, shall be an amount necessary to pay at maturity all bonds then outstanding.

In the case of any such payment the Company shall have the right, in lieu of making such payment as above provided, to furnish to the Trustee security that such payment will be made at least five (5) days prior to such interest payment date, in which case the Company will make such payment at least five (5) days before such interest payment date. Such security shall be either (a) an amount of securities of the United States Government of an aggregate market value at least equal to such payment, or (b) a guarantee by some banking institution acceptable to the Trustee that such payment will be made as above provided.

At its option, the Company may, in lieu of all or any part of any sinking fund payment in cash, deliver to the Trustee on or before the date on which such payment in cash is due, bonds previously authenticated by the Trustee and delivered hereunder, with all unmatured coupons attached, each bond so delivered to be received by the Trustee in lieu of cash in an amount equal to the principal amount of such bond; provided that in any such case the Company shall notify the Trustee in writing of the aggregate principal amount of bonds which it will deliver to the Trustee in lieu of cash as part of such sinking fund payment, at least one and one-half months prior to such interest payment date, viz, on or before February 15th and August 15th of each year, as the case may be.

SECTION 22. After February 15th and August 15th of each year beginning with August 15, 1927, the Trustee shall draw by lot in such manner as it may elect a number of bonds equal so far as possible to the number of bonds which, at the redemption price in effect on the next succeeding interest payment date, may be redeemed by the amount of such next succeeding sinking fund payment payable in cash plus any balance of cash at the time held in the sinking fund; and the Trustee shall thereupon, in anticipation of the receiving of such payment, call the bonds so drawn for redemption on the next succeeding interest payment date at the

redemption price in effect on such interest payment date as hereinafter prescribed in Article Four hereof. Notice of such redemption shall be given by the Trustee, on behalf of the Company, by publication as hereinafter in said Article Four provided, and such redemption shall in all respects be in accordance with the provisions of said Article Four.

The coupons maturing on such redemption date shall not be paid out of sinking fund moneys, but shall continue to be payable by the Company in accordance with the terms thereof.

Anything in this Article to the contrary notwithstanding, the Trustee shall not be required to publish any notice of redemption under this Article at any time, unless the moneys to be available for such purpose shall amount to at least Twenty-one Thousand Dollars ($21,000).

SECTION 23. Bonds delivered to the Trustee as part of any sinking fund payment and bonds redeemed by the operation of the sinking fund shall be cancelled and no bonds shall be issued in place thereof.

Any interest allowed by the Trustee upon sinking fund moneys shall from time to time be paid to the Company upon its request, so long as the Company shall not be in default hereunder.

The Company convenants and agrees to pay to the Trustee, upon request, otherwise than out of the sinking fund, the cost of advertising of redemption notices and any other disbursements and other expenses under this Article.

ARTICLE FOUR.

REDEMPTION OF BONDS.

SECTION 24. The Company at its option may redeem all or any part of the bonds issued hereunder and then outstanding on any interest payment date prior to maturity, at the principal amount thereof and accrued interest to the date of redemption, together with the following premiums on the principal amount; a premium of five per cent (5%) of the principal sum if redeemed on or prior to April 1, 1931; a premium of four per cent (4%) of the principal sum if redeemed after April 1, 1931, and on or prior to April 1, 1935; a premium of three per cent (3%) of the principal sum if redeemed after April 1, 1935, and on or prior to April 1, 1939; a premium of two per cent (2%) of the principal sum if redeemed after April 1, 1939, and on or prior to April 1, 1943; a premium of one per cent (1%) of the principal sum if redeemed after April 1, 1943, and on or prior to October 1, 1946; but in each case with interest accrued to the date of redemption. Notice

of intention to redeem shall be given by the Company by publication in one daily newspaper of general circulation in the Borough of Manhattan, City and State of New York, and in one such newspaper in the City of Marion, Ohio, once a week for four (4) successive weeks, the first publication to be not less than twenty-five (25) nor more than fifty (50) days before such redemption date. A copy of such notice shall also be mailed by the Company at least twenty-five (25) days and not more than fifty (50) days before such redemption date to the holders of bonds registered as to principal which are to be redeemed, at their last addresses appearing upon the registry books. The failure to give such notice by mailing shall not, however, affect the validity of any proceeding for the redemption of bonds. At least thirty (30) days before the redemption date specified in such notice, the Company will deposit with the Trustee an amount in cash sufficient to redeem all of the outstanding bonds which are to be redeemed, to be held for the account of the holders thereof and to be paid to them respectively upon presentation and surrender of said bonds with all unmatured coupons thereto attached. The sworn certificate of any officer of the Company as to the giving of proper notice of redemption shall be full and complete authority to the Trustee for any action to be taken by it in reliance thereon.

In the case of any such payment the Company shall have the right, in lieu of making such payment thirty (30) days before the redemption date, as above provided, to furnish the Trustee security that such payment will be made at least five (5) days prior to such redemption date, in which case the Company will make such payment at least five (5) days before such redemption date. Such security shall be either (*a*) an amount of securities of the United States Government of an aggregate market value at least equal to such payment, or (*b*) a guarantee by some banking institution acceptable to the Trustee that such payment will be made as above provided.

In case the Company shall elect to redeem less than all of the bonds then outstanding, it shall give the Trustee written notice at least fifty (50) days prior to the redemption date of the aggregate principal amount of bonds to be redeemed, and thereupon the Trustee shall draw by lot, in such manner as the Trustee may elect, from the numbers of bonds outstanding, the distinguishing numbers of a principal amount of bonds equal to such aggregate principal amount of bonds to be redeemed, and shall thereafter notify the Company in writing of the numbers of the bonds so drawn.

SECTION 25. On the date set for redemption, the notice of

intention to redeem having been completed by publication as above provided, said bonds so called shall become due and payable at the principal office of W. A. Harriman & Co., a co-partnership, in the Borough of Manhattan, City of New York, and the necessary funds for redemption having been deposited with the Trustee, said bonds so called shall cease to draw interest and the coupons for interest accruing after that date shall be void, and such bonds shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefit and security of this Indenture except to receive payment from the moneys reserved therefor in the hands of the Trustee. If after having completed the publication of notice of intention to redeem, the Company shall fail to deposit the necessary funds for such redemption, such failure shall constitute a default under this Indenture and thereupon all the remedies provided for in Article Seven hereof with respect to a default in the payment of principal shall be available to and enforceable by the Trustee.

Bonds redeemed shall be cancelled and be delivered to the Trustee and no bonds shall be issued in place thereof.

On the deposit with the Trustee of the amount necessary to redeem all of the bonds outstanding, together with accrued interest on the principal thereof, and on delivery to the Trustee of (1) proof satisfactory to the Trustee that notice of redemption thereof has been given as aforesaid, or (2) a written instrument executed by the Company under its corporate seal and expressed to be irrevocable, authorizing the Trustee to give notice for and on behalf of the Company, and on payment to the Trustee of all costs, charges and expenses in relation thereto and under this Indenture, the Trustee shall, by proper instrument, release, convey and deliver the mortgaged property free from the lien of this Indenture and take all reasonable and necessary steps to cause this Indenture to be cancelled, satisfied and discharged of record. The Trustee shall apply the moneys so deposited with it to the payment, through the Paying Agent, of the bonds so called for redemption, but shall in no event be liable beyond the amount so deposited with it.

ARTICLE FIVE.

Release of Property.

Section 26. Unless and until an Event of Default shall occur as defined in Section 35 hereof, the Company shall be suffered and permitted to retain full possession and control of the mortgaged property and to receive, use and enjoy the rents, issues and profits thereof free from the lien of this Indenture.

SECTION 27. From time to time, subject to the conditions and limitations in this Article provided and not otherwise, the Company may sell or exchange for other property any part of the mortgaged property, and the Trustee shall release from the lien of this Indenture any such property, upon delivery to the Trustee of

(1) the written request of the Company;

(2) a copy of a resolution of its Board of Directors, certified by its Secretary or an Assistant Secretary under its corporate seal, authorizing or approving such request and the certificate herein provided for; and

(3) the verified certificate of the President or a Vice-President of the Company, setting forth (*a*) a description of the property, a release of which is requested; (*b*) that it is no longer necessary or advantageous to retain such property for use in connection with the business of the Company, and that such sale or exchange and release of such property is for the best interests of the Company and of the bondholders, and that the security hereby afforded will not be impaired by such release; (*c*) that the release requested is required for the purpose of carrying out an agreement for the sale of the property to be released or for the exchange thereof for other property; (*d*) the sale price of the property, a release of which is requested, if such property is to be sold, and a description of any other property to be received in exchange therefor; (*e*) that the fair value, in the opinion of the signer, of the property, a release of which is requested, is not greater than its sale price or the fair value of any property to be received in exchange; and (*f*) that the Company is not to the knowledge of the signer in default in the performance of any covenant or agreement in the bonds or in this Indenture contained;

(4) the cash or the cash and purchase money obligations, assignment and opinion of counsel required by Section 28 hereof to be delivered to the Trustee.

SECTION 28. In any case where property is sold, there shall be deposited with the Trustee an amount in cash equal to the sale price of the property as stated in the certificate provided for in paragraph (3) of Section 27 hereof; provided that in case of the release of real property, plants and buildings owned in fee or by perpetual leasehold, in lieu of the full amount of such cash there may be deposited with the Trustee cash equal to at least one-third (1/3) of such amount, together with the obligation of the purchaser to pay the remainder of such amount, secured by purchase money mortgage upon the property sold, duly assigned to the

Trustee. In case of such deposit and assignment of any purchase money obligation and purchase money mortgage, there shall also be delivered to the Trustee the written opinion of counsel (who may be counsel for the Company) that such purchase money obligation and purchase money mortgage have been properly authorized and executed and that such purchase money obligation has been validly issued and that such mortgage securing such obligation is a valid lien upon the property which it purports to convey.

In case of the release of any property in exchange for other property, the fair value of the property to be received in exchange (over and above the principal amount of all liens thereon as hereinafter in this Section permitted) as stated in the certificate delivered to the Trustee as provided in paragraph (3) of Section 27 hereof, shall be at least as great as the fair value of the property released, as stated in such certificate.

Any and all property acquired by the Company in exchange for or to take the place of any property released hereunder, and any and all property acquired by the Company by the use of the proceeds of sale of released property paid out under Section 30 hereof, *ipso facto* shall become and be subject to the lien of this Indenture as fully as if specifically mortgaged and pledged hereby; but if requested by the Trustee the Company will convey such property to it by appropriate deeds and assignments upon the trusts and for the purposes of this Indenture. The Company shall deliver to the Trustee the written opinion of counsel (who may be counsel for the Company) stating either that such deeds or other instruments delivered to the Trustee are sufficient for that purpose, or that no deeds or other instruments are necessary to subject any such property to the lien of this Indenture, and also stating that such property has been (or by the execution and delivery of such deeds or other instruments will be) subjected to the lien of this Indenture as a first lien thereon, subject only to liens as hereinafter permitted by this Section, any such liens to be described and their principal amount set forth in said opinion. All such property shall become subject to the lien of this Indenture as a first lien thereon, except for mortgage or other liens existing thereon at the time of acquisition thereof by the Company and purchase money mortgages created thereon in connection with such acquisition.

Section 29. The Company, from time to time, may make such changes, alterations, modifications or substitutions in, or extensions or renewals of, any and all leases or contracts now subject or which may at any time become subject to the lien of this

Indenture, as it shall deem advantageous, or may terminate the same. Any new lease entered into in place of the lease so terminated shall *ipso facto* become subject to the lien hereof.

SECTION 30. All moneys held by the Trustee under this Article from time to time upon the written request of the Company shall be paid out to reimburse the Company for the actual cost to the Company of additional physical property, including betterments, improvements, extensions and additions to the mortgaged property, acquired or constructed by the Company subsequent to the date of this Indenture and subjected to the lien hereof. Upon any such application there shall be delivered to the Trustee:

(1) the written request of the Company;

(2) a copy of a resolution of its Board of Directors, certified by its Secretary or an Assistant Secretary under its corporate seal, authorizing or approving such request;

(3) the verified certificate of the President or a Vice-President and the Treasurer or an Assistant Treasurer of the Company, describing such additional property, betterments, improvements, extensions and additions in reasonable detail, stating the actual cost thereof to the Company, and that the same is not greater than the fair value thereof, and that the same have been acquired or constructed by the Company subsequent to the date of this Indenture and subjected to the lien hereof.

At the option of the Company, any moneys held by the Trustee under this Article shall upon the written request of the Company be applied by the Trustee (*a*) to the purchase, through the Paying Agent, of bonds hereby secured, at the best prices obtainable, not exceeding the then redemption price thereof with accrued interest, or (*b*) to the redemption before maturity in the manner provided in Article Four hereof of bonds hereby secured.

Moneys received as compensation for any part of the mortgaged property taken by the exercise of the power of eminent domain shall, after deduction of the reasonable expenses of defending such condemnation, be treated as if realized from a voluntary sale.

The principal of any purchase money obligations received by the Trustee under this Article shall be collected by the Trustee, the interest as received thereon meanwhile to be paid over to the Company unless and until the Company shall be in default under any of the provisions hereof.

SECTION 31. The Company shall have full power, from time to time in its discretion, without reference to the Trustee, to dispose of, free from the lien hereof, any of its machinery, apparatus, appliances, tools, implements, materials and supplies (whether or

not the same be fixtures), at any time subject to the lien hereof, which may have become worn out or unserviceable or unsuitable for use in its business, provided that the same shall be replaced by new machinery, apparatus, appliances, tools, implements, materials and supplies or other physical property, of at least equal value, which shall forthwith become subject to the lien of this Indenture.

SECTION 32. In case the mortgaged property shall be in the possession of a receiver lawfully appointed, the powers in and by this Article conferred upon the Company may be exercised by such receiver, with the approval of the Trustee, and if the Trustee shall be in possession of the mortgaged property under any provision of this Indenture, then all the powers in this Article conferred upon the Company may be exercised by the Trustee.

The Trustee shall not be required under any of the provisions of this Article to release at the request of the Company any part of the mortgaged property from the lien hereof at any time when to the knowledge of the Trustee the Company shall be in default in the performance of any covenant or agreement in the bonds or in this Indenture contained, but notwithstanding any such default, the Trustee may, and if requested by the holders of twenty-five per cent (25%) in principal amount of bonds at the time outstanding shall, release from the lien hereof any part of the mortgaged property, upon compliance with the conditions specified in this Article with respect thereof.

SECTION 33. The Trustee shall be fully protected in relying on the written requests, certificates, certified copies of resolutions, opinions and any other instruments or papers herein provided for in this Article, and shall be under no duty to make any inquiry or independent investigation as to the truth of any statements contained therein, but it may make such investigation in its discretion at the expense of the Company.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provisions of this Article be required to ascertain the authority of the Trustee to execute the release, to see to the application of the purchase money, or to inquire as to any facts required by the provisions hereof for the exercise of such authority.

ARTICLE SIX.

SUPPLEMENTAL INDENTURES.

SECTION 34. The Company and the Trustee may, from time to time, enter into such indentures supplemental hereto as shall be

deemed by them necessary or desirable, for one or more of the following purposes:

(*a*) To correct the description of any property hereby mortgaged or intended so to be, or to mortgage hereunder additional property, for the equal and proportionate benefit and security of the holders of all bonds at any time issued and outstanding hereunder;

(*b*) To add to the covenants and agreements of the Company for the protection of the holders of bonds outstanding hereunder and of the mortgaged property;

(*c*) To evidence the succession of another corporation to the Company, or successive corporations, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company under this Indenture;

(*d*) For any other purpose not inconsistent with the terms of this Indenture, or for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective or inconsistent provision, contained herein or in any supplemental indenture.

ARTICLE SEVEN.

Remedies on Default.

Section 35. If one or more of the following events, hereinafter called "Events of Default", shall happen, that is to say:

(*a*) Default shall be made in the payment of any instalment of interest upon any of the bonds issued hereunder when and as the same shall become due and payable, and such default shall have continued for the period of sixty (60) days, or

(*b*) Default shall be made in the payment of the principal of any of the bonds issued hereunder when and as the same shall become due and payable, whether at maturity as therein expressed or by declaration or otherwise as authorized by this Indenture, or

(*c*) Default shall be made in the payment of any sum payable for the sinking fund hereby created, and such default shall have continued for the period of ninety (90) days, or

(*d*) Default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Company in the bonds or in this Indenture contained, and such default shall have continued for the period of sixty (60) days after written notice thereof and demand for such performance shall have been given to

the Company by the Trustee (whose duty it shall be to give such notice and demand on written request by the holders of twenty-five per cent (25%) in principal amount of the bonds then outstanding), or

(*e*) An order shall have been made for the appointment of a receiver of the Company or of its property and remain unvacated for a period of sixty (60) days, or the Company shall be judicially declared to be bankrupt or insolvent, or shall institute proceedings for voluntary bankruptcy, or shall apply for or consent to the appointment of a receiver for itself or its property, or shall have made a general assignment for the benefit of creditors,

then in each and every such case the Trustee may, and upon written request of the holders of twenty-five per cent (25%) in principal amount of the bonds then outstanding and upon being indemnified to its satisfaction shall, declare the principal of all the bonds then outstanding hereunder (if not already due), together with all accrued interest, to be due and payable immediately; and upon any such declaration the principal of all the bonds, together with all accrued interest, shall become and be due and payable immediately, anything in this Indenture or in said bonds contained to the contrary notwithstanding.

This provision, however, is subject to the condition that if at any time after the principal of the bonds shall have been so declared and become due and payable, and before any sale of the mortgaged property shall have been made, all arrears of interest upon all the bonds, with interest upon any overdue instalment of interest at the rate expressed in the bonds, and all expenses of the Trustee, shall be paid by the Company, and every other default in the observance or performance of any other covenant or provision of the bonds or of this Indenture shall be made good or shall be secured to the satisfaction of the Trustee, or arrangements deemed by the Trustee to be adequate shall be made therefor—then and in every such case the Trustee may, and upon the written request of the holders of a majority in principal amount of the bonds hereby secured then outstanding shall, waive the default by reason of which the principal of the bonds shall have so become due, and rescind and annul such declaration and its consequences; but no such waiver, rescission or annulment shall extend to or affect any subsequent default or shall impair any right consequent thereon.

SECTION 36. In case any Event of Default shall occur as defined in Section 35 hereof, then and in each and every such case the Company, upon demand of the Trustee, shall forthwith surrender to the Trustee the actual possession of, and it shall be

lawful for the Trustee, personally or by its agents or attorneys, to enter upon and take possession of all of the mortgaged property and to hold, operate and manage the same, and to conduct the business of the Company to the best advantage of the holders of bonds hereby secured, and from time to time to make all needful or proper repairs, renewals, replacements, alterations, additions, extensions, betterments and improvements to the mortgaged property as to the Trustee may seem best, and to receive the rents, earnings, income, issues and profits thereof, and after deducting all the expenses of so taking, holding and managing the same, and all payments which may be made for taxes, assessments, insurance and prior and other proper charges upon the mortgaged property or on any part thereof, together with reasonable compensation for the services of the Trustee, its agents, servants and counsel, the Trustee shall apply the remainder of the moneys so received by it (subject to the provisions of Section 9 hereof) first to the *pro rata* payment of the unpaid interest, if any, due upon all bonds hereby secured then outstanding, and then to the payment equally and ratably of the principal of the bonds if they shall have matured by declaration or otherwise, the balance, if any, to be returned to the Company.

Whenever all that is due upon all bonds both for principal and interest shall have been paid, and all defaults thereunder and hereunder made good, the Trustee shall surrender possession of the mortgaged property to the Company, its successors and assigns. The same right of entry, however, shall exist upon any subsequent default.

SECTION 37. In case any Event of Default shall occur as defined in Section 35 hereof, then and in each and every such case of default the Trustee in its discretion either

(*a*) may sell to the highest bidder all and singular the mortgaged property, and all right, title and interest, claim and demand therein and thereto, and all right of redemption thereof, which sale or sales shall be made at public auction at such place or places, and at such time and upon such terms, as the Trustee may fix and briefly specify in the notice of sale to be given as hereinafter provided, or as may be required by law; or

(*b*) may proceed to protect and enforce its rights and the rights of the holders of the bonds and coupons by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this Indenture, or for the enforcement of any other

appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect or enforce any of its rights or duties hereunder.

SECTION 38. Upon the written request of the holders of twenty-five per cent (25%) in principal amount of the bonds then outstanding, in case any Event of Default shall occur as defined in Section 35 hereof, it shall be the duty of the Trustee, upon being indemnified to its satisfaction, to take all steps needful for the protection and enforcement of the rights of the Trustee and the rights of the holders of the bonds hereby secured, and to exercise the power of sale herein conferred, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the bonds hereby secured.

Anything in this Indenture to the contrary notwithstanding, the holders of a majority in principal amount of the bonds hereby secured and then outstanding, from time to time shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct whether the Trustee shall proceed to sell all or any of the mortgaged property, or shall proceed by suit in equity or action at law, or both, and to direct and control the method and place of conducting any proceedings for any sale of the mortgaged property, or for the foreclosure hereof, or for a receiver, or any other proceeding hereunder; but they shall have no right or power to involve the Trustee in any personal liability of any kind to anybody, without first and from time to time indemnifying it to its satisfaction, and the Trustee shall have the right to decline to follow any such direction which in its opinion, or as it may be advised, would be unjustly prejudicial to non-assenting bondholders.

SECTION 39. In the event of any sale, whether made under the power of sale herein granted, or under or by virtue of judicial proceedings, the whole of the premises and property subject to this Indenture shall be sold in one parcel and as an entirety, unless such sale as an entirety is in the judgment of the Trustee impracticable or inadvisable for any reason, or unless the holders of a majority in principal amount of the bonds hereby secured shall in writing request the Trustee to cause said property to be sold in parcels, in which case the sale shall be made in such parcels and in such order as may be specified in such request.

SECTION 40. Notice of any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, shall state the time and place when and where the same is to be made, and shall contain a brief general description of the

property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to the date fixed for such sale in one daily newspaper of general circulation in the Borough of Manhattan, City and State of New York, and in one such newspaper in the City of Marion, Ohio; such notice shall also comply with any requirements of law.

SECTION 41. The Trustee, in its discretion, may adjourn from time to time any sale by it to be made under the provisions of this Indenture or under or by virtue of judicial proceedings, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication such sale may be made at the time and place to which the same shall be so adjourned.

SECTION 42. Upon the completion of any sale or sales under this Indenture or under or by virtue of judicial proceedings, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or other instrument conveying, assigning and transferring the property sold. The Trustee is hereby appointed the true and lawful attorney irrevocable of the Company, in its name and stead to make all deliveries and to execute all deeds and instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Company hereby ratifying and confirming all that its said attorney or such substitute or substitutes may lawfully do by virtue hereof. Nevertheless the Company shall, if so requested by the Trustee, ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers, or by joining in the execution thereof, all such deeds and instruments as may be necessary or in the judgment of the Trustee proper for the purpose, and as may be designated in such request.

Any such sale or sales, whether under the power of sale herein granted or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company of, in and to the property so sold, and shall be a perpetual bar both at law and in equity against the Company, its successors and assigns, and against any and all persons claiming or to claim the property sold, or any part thereof from, through or under the Company, its successors or assigns.

SECTION 43. The receipt of the Trustee for the purchase money paid at any such sale under the power of sale herein granted, or of the Trustee or of a Special Master for the purchase money paid at any such sale had under or by virtue of judicial proceedings, shall be a sufficient discharge therefor to any pur-

chaser of the property or any part thereof, sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SECTION 44. In case of a sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, the principal amount of all bonds hereby secured then outstanding, together with all accrued interest thereon, if not previously due, shall immediately thereupon become and be due and payable, anything in said bonds or in this Indenture to the contrary notwithstanding.

SECTION 45. The purchase money, proceeds or avails of any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this Indenture, shall be applied as follows and in the following order:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and to the payment of all expenses, liabilities and advances made or incurred by the Trustee, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other prior liens subject to which such sale shall have been made;

Second. To the payment of the whole amount then owing and unpaid upon the bonds hereby secured for principal and interest, with interest on the principal and on the overdue instalments of interest at the rate expressed in the bonds; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the bonds, then to the payment of the principal and interest of the bonds, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest, ratably to the aggregate of such principal and the accrued and unpaid interest; upon presentation of the several bonds and coupons and the stamping thereon of such payment, if only partially paid, and upon surrender thereof, if fully paid; subject, however, to the provisions of Section 9 hereof;

Third. To the payment of the surplus, if any, to the Company,

its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 46. Upon any sale, whether made under the power of sale herein granted or under or by virtue of judicial proceedings, any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any of the bonds and any matured and unpaid coupons, subject to the provisions of Section 9 hereof, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations and other charges; and thereupon such purchaser shall be credited, on account of such purchase price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the bonds and coupons so presented.

At any such sale the Trustee, either on behalf of the bondholders or in its own behalf, or any bondholder, may bid for and may purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

SECTION 47. The Company covenants that in case (*a*) default shall be made in the payment of the principal of any of the bonds issued hereunder when and as the same shall become due and payable, whether at maturity as therein expressed or by declaration or otherwise as authorized by this Indenture or (*b*) default shall be made in the payment of any instalment of interest upon any of the bonds issued hereunder when and as the same shall become due and payable, and such default shall have continued for a period of sixty (60) days, the Company will pay to the Trustee, upon demand, for the benefit of the holders of the bonds then outstanding, the whole amount which then shall have become due and payable on all the bonds and coupons then outstanding, for interest or principal or both, as the case may be, with interest upon the principal and on the overdue instalments of interest at the rate expressed in the bonds; and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any and all expenses and liabilities incurred by the Trustee hereunder. Until such demand is made by the Trustee, the Company may pay the principal and

interest of each of the bonds to the bearer or registered holder, as the case may be; but after such demand shall have been made, payment of the bonds and of the coupons shall be made only to the Trustee.

In case the Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid. The Trustee shall be entitled to recover judgment either before or after or during the pendency of any proceedings, judicial or otherwise, for the enforcement of the lien of this Indenture, and the right of the Trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or for the foreclosure of the lien hereof; and in case of any sale of the property subject to this Indenture and of the application of the proceeds of sale to the payment of the indebtedness hereby secured, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid for principal and interest as aforesaid upon any and all of the bonds then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon any such judgment upon any part of the mortgaged property, or upon any other property, shall in any manner or to any extent affect the lien of this Indenture upon the property, or any part of the property, subject to this Indenture, or shall affect any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the Trustee or of the bondholders, but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys collected by the Trustee under this Section shall be held by the Trustee and applied, first, to the payment of the expenses, disbursements and compensation of the Trustee, its agents, attorneys and counsel, and second, towards payment of the amounts then due and unpaid for principal and interest upon the bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 9 hereof), according to the amounts due and payable upon the bonds and coupons respectively, at a date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and the stamping of such payments thereon, if partly paid, and upon surrender thereof, if fully paid.

SECTION 48. The Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force; nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the mortgaged property or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, will it claim or exercise any right under any statute enacted by the United States of America or by any State or otherwise, to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SECTION 49. Upon the filing of a bill in equity or other commencement of any suit or judicial proceeding hereunder, the Trustee shall be entitled, as of right, to the appointment, by any Federal or State court having jurisdiction, of a receiver or receivers of the mortgaged property or any part thereof, with full power to manage and operate the same pending such proceedings and to collect and receive the proceeds arising from such operation.

SECTION 50. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

SECTION 51. All rights of action under this Indenture or under any of said bonds or coupons, enforceable by the Trustee, may be enforced by the Trustee without the possession of any of the bonds or coupons or the production thereof on any trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its own name for the ratable benefit of the holders of said bonds and coupons.

SECTION 52. No delay or omission of the Trustee or of any holder of bonds to exercise any right or power accruing upon any default, shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee

or to the bondholders may be exercised from time to time, and as often as may be deemed expedient. No waiver by the Trustee or by the bondholders of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default or to impair any rights resulting therefrom.

SECTION 53. In case the Trustee shall have proceeded to enforce any right under this Indenture by foreclosure or otherwise, and such proceeding shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Trustee, then, and in every such case, the Company and the Trustee shall severally and respectively be restored to their former position and rights hereunder in respect of the mortgaged property, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

SECTION 54. No holder of any bond or coupon shall have the right to institute any suit, action or proceeding at law or in equity upon or in respect of this Indenture, or for the execution of any trust or power hereof, or for any other remedy under or upon this Indenture, unless such holder shall previously have given to the Trustee written notice of an existing Event of Default as hereinbefore in Section 35 hereof defined, nor unless also the holders of at least twenty-five per cent (25%) in principal amount of the bonds then outstanding shall have made written request upon the Trustee after the happening and continuance of such default, and shall have afforded to it reasonable opportunity, either to proceed itself to execute the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and unless the Trustee shall not have so proceeded within a reasonable time; nor unless also such holder or holders shall have tendered to the Trustee security and indemnity satisfactory to it against all costs, expenses and liabilities which may be incurred in or by reason of any such action, suit or proceeding; and such notification, request and tender of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for foreclosure or for any other remedy hereunder; it being intended that no one or more holders of the bonds or coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this Indenture by his or their action or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder shall be instituted and maintained in the manner herein provided for the equal benefit of all holders of the outstanding bonds and coupons.

The foregoing provisions of this Section shall not be construed to affect any discretion or power by any provision of this Indenture given to the Trustee to determine whether or not it shall take action in respect of any default without such notice or request from bondholders, or to affect any other discretion or power given to the Trustee.

ARTICLE EIGHT.

Waiver of Individual Liability

Section 55. Each of the bonds secured hereby is issued upon the express condition, to which each successive holder thereof expressly assents and by receiving the same agrees, that no recourse under or upon any obligation, covenant or agreement of this Indenture, or for the payment of any bonds or coupons hereby secured, shall be had to any individual liability of any incorporator, or any past, present or future stockholder, officer or director of the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise howsoever, all such liability being waived, and it being expressly understood and agreed that this Indenture and the obligations issued hereunder are solely corporate obligations, and that any and all personal liability of every nature, either at law or in equity or by statute or constitution, of every such incorporator, stockholder, officer and director is hereby expressly waived and released as a condition of and as part of the consideration for the execution of this Indenture and the issue of such bonds and coupons.

ARTICLE NINE.

Evidence of Rights of Bondholders and Ownership of Bonds.

Section 56. Any demand or request or other instrument required by this Indenture to be signed and executed by bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of any bond not registered as to principal, shall be sufficient for any purpose of this Indenture, if such proof be made in the following manner:

The fact and date of the execution by any person of any such demand, request or other instrument in writing may be proved

by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded, to the effect that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution.

The fact of the holding by any bondholder of any bond not registered as to principal and the amounts and numbers of such bonds and the date of his holding the same, may be proved by either producing and exhibiting to the Trustee the actual bonds themselves, or by a certificate executed by any trust company, bank or banker, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such trust company, bank or banker the bonds described in such certificate. Such ownership may be deemed to continue until written notice to the contrary is served upon the Trustee. The ownership of registered bonds shall be proved by the register of such bonds.

ARTICLE TEN.

Concerning the Trustee.

The Trustee accepts the trusts hereby created, but only upon the terms and conditions hereafter in this Article set forth.

Section 57. The Trustee shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor for anything whatever in connection with this trust except for its individual wilful misconduct. The Trustee shall not be under any obligation to take any action toward the execution or enforcement of the trusts hereby created which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of bonds issued hereunder shall, as often as required by the Trustee, furnish indemnity satisfactory to the Trustee against such expense or liability; nor shall the Trustee be required to take notice of any default or Event of Default hereunder, and it may, for all purposes, conclusively assume that there has been no default or Event of Default hereunder, unless and until notified in writing thereof by one or more holders of bonds issued hereunder and then outstanding, or to take any action in respect of any default or Event of Default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent (25%) in principal amount of the bonds issued hereunder and then outstanding, and upon being tendered indemnity as herein-

before provided. The foregoing provisions of this Section are intended only for the protection of the Trustee and shall not be construed to affect any discretion or power by any provision of this Indenture given to the Trustee to determine whether or not it shall take action in respect of any default or Event of Default without such notice or request from bondholders, or to affect any other discretion or power given to the Trustee.

Any action by the Trustee upon the request of any person who at the time is the owner of any bonds, shall be conclusive and binding upon all future owners of the same bonds.

The Trustee shall be under no obligation to see to any recording, registry, filing, refiling or renewal of this Indenture or of any supplemental indenture or instrument of further assurance.

The Trustee shall incur no liability to anybody in acting upon any notice, request, opinion, consent, certificate, note, document or paper believed by it to be genuine or to have been signed or presented by the proper persons or properly authorized or duly made.

As to the existence or non-existence of any fact or circumstance or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Company signed by its President or a Vice-President and attested by its Secretary or an Assistant Secretary, as sufficient evidence of the facts therein contained or of the truth of the statements therein made, unless other evidence is specifically required herein. The Trustee may receive a certificate under the corporate seal of the Company and signed by the Secretary or an Assistant Secretary of the Company as sufficient evidence of the due adoption of any resolution by the Board of Directors of the Company. The Trustee may rely upon, and shall incur no liability for any action taken by it in reliance upon any such resolution so certified.

The Trustee shall be reimbursed by the Company upon demand for, and be indemnified against, any liability or damages which may be sustained by it in the premises. The Trustee shall have a lien upon the mortgaged property prior to that of any bond issued hereunder for its compensation and expenses, and also for any liability or damage by it sustained in the premises.

The Trustee makes no undertaking in respect of, and shall not be responsible in any manner whatsoever for, the validity or sufficiency of this Indenture or of the lien hereof or of any of the bonds issued hereunder, or for any recitals herein or in the bonds contained, all such recitals being made and to be taken as statements of the Company solely; nor shall the Trustee be account-

able for the use of any bonds authenticated and delivered hereunder, or for the application of the proceeds of such bonds, or for insuring any property, or for the payment of any insurance premium or of any tax, assessment or other charge which may be levied or assessed against the Company, or against the property hereby mortgaged or intended so to be, or for the performance of any covenant, agreement or condition herein on the part of the Company, or for the titles of the Company to any of the mortgaged property, or for the value or validity of any of the security hereunder. The Trustee may advise with counsel, and any action taken or suffered under this Indenture in good faith by the Trustee in accordance with the opinion of counsel, shall be conclusive on the Company and on all holders of bonds issued hereunder, and the Trustee shall be fully protected in respect of any such action.

Anyone holding the office of Trustee hereunder may from time to time purchase, acquire, hold, own and deal in any of the bonds issued hereunder, and assert its rights in respect thereof in the same manner as any other bondholder hereunder.

Any moneys received by the Trustee under any provision of this Indenture, may be treated by it, until it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest, save such as during that period it may agree with the Company to pay thereon. The Trustee shall not be under any obligation to invest any monies held by it or under its control.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, including reasonable counsel fees for the services of counsel in connection with the execution of such trusts, and the Company hereby agrees to pay such compensation, as well as all expenses necessarily incurred by the Trustee. In case of non-payment of any such compensation or expenses, the amount unpaid shall be a claim against the Company and a lien upon the mortgaged property prior to the bonds issued hereunder and they shall be payable out of any funds or monies in the hands of the Trustee. The compensation of the Trustee shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust.

SECTION 58. Any notice or demand by any bondholder shall be due and sufficient notice or demand for each and every purpose hereunder if given or made at the principal office of the Trustee. Any notice or demand which by any provision of this Indenture is required or provided to be given or served by the Trustee on

the Company shall be deemed to have been sufficiently given and served, for all purposes, by being deposited as registered mail matter, postage prepaid, in any United States Post Office in the city where the principal office of the Trustee is then located, addressed as follows: The Marion Steam Shovel Company, Marion, Ohio, or at such other address as the Company may from time to time designate in writing to the Trustee.

SECTION 59. Any company into which the Trustee may be merged, or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Trustee shall be a party, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further action on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any of the bonds issued hereunder shall have been authenticated but not delivered, then any successor trustee may adopt the certificate of authentication of Guaranty Trust Company of New York and deliver the same so authenticated; and in case any of such bonds shall not have been authenticated, any successor trustee may authenticate such bonds by the appropriate officer of the successor trustee; and in all such cases such certificate shall have the full force which it is anywhere in said bonds or in this Indenture provided that the certificate of the original Trustee shall have.

SECTION 60. The Trustee or any trustee or trustees hereafter appointed, may resign the trust hereby created and become and remain fully discharged from all further duty or responsibility thereunder, upon giving thirty days' notice in writing to the Company or any officer thereof, or such short notice as the Company may accept as sufficient, in which notice there shall be stated a date when such resignation shall take effect; and such resignation shall take effect on the day specified in said notice unless previously a successor trustee or co-trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee. The Trustee may be removed from office at any time by an instrument in writing under the hands of the holders of a majority in principal amount of the bonds issued hereunder and then outstanding, subject to the right of the Trustee to receive reasonable compensation and repayment of all costs, charges and expenses incurred.

SECTION 61. In case the Trustee shall resign or be removed, or otherwise become incapable of acting hereunder, or in case the Trustee shall be taken under the control of any public officer or of a receiver appointed by a court, the Company shall nominate

and appoint a new trustee or co-trustee in its place and stead. Any trustee appointed hereunder shall be a national banking association, bank or trust company in good standing and having its principal office in the Borough of Manhattan, City of New York, and having a capital and surplus aggregating at least two million dollars, if there shall then be such a banking association, bank or trust company willing and able to accept the trusts upon reasonable terms. Said appointment by the Company shall be attested by the certificate in writing of the President or a Vice-President and the Secretary or an Assistant Secretary of the Company under its corporate seal, and the written acceptance thereof by the Trustee so appointed, and the Trustee so appointed shall have the like powers and be subject to the same conditions as hereinbefore provided.

Immediately upon any such appointment the Company shall give notice thereof by publication in one daily newspaper of general circulation in the Borough of Manhattan, City and State of New York, and in one such newspaper in the City of Marion, Ohio, once a week for four weeks. Within six months after the commencement of such publication the holders of a majority in principal amount of bonds issued hereunder and then outstanding shall have power to nominate and appoint, by an instrument in writing, signed by such a majority, another trustee in the place and stead of the one so appointed by the Company. The Trustee so appointed shall upon written acceptance have the like powers and be subject to the same conditions as hereinbefore provided, and if the holders of a majority in principal amount of bonds issued hereunder and then outstanding shall not make such nomination and appointment within said six months, then the Trustee so nominated and appointed by the Company shall continue to act as, and be the Trustee hereunder.

Any such new Trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor Trustee without any further act, deed or conveyance, shall become vested with all the estate, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named as Trustee hereunder; but, nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee upon the trusts herein expressed, all the estate, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall deliver to its successor all property and moneys held by it. Upon request of

any such successor Trustee, the Company shall execute, acknowledge and deliver any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such estate, properties, rights, powers and trusts.

SECTION 62. If at any time or times, in order to conform to any legal requirement, the Trustee shall so request, the Company and the Trustee shall unite in the execution and performance of all instruments and agreements necessary or proper to appoint another bank or trust company or one or more persons, approved by the Trustee, either to act as co-trustee or co-trustees of all or any part of the mortgaged property, jointly with the Trustee originally named herein or its successor, or to act as separate trustee or trustees of any such property; and any such trustee or trustees may be removed by the Company and the Trustee named herein or its successor at any time by an instrument in writing executed by them jointly. The Company hereby irrevocably appoints the Trustee its agent at any future time or times and without any further act by the Company (whenever the Company shall not join with it in any such appointment or removal within twenty days after written request by the Trustee so to do) to appoint or remove any such trustee or co-trustee and to execute, deliver and perform any and all instruments and agreements necessary or proper in connection with the foregoing.

In all cases where this Indenture does not make other express provision as to the evidence on which the Trustee may rely for any action, non-action, judgment or exercise of discretion on its part, the Trustee may accept as conclusive evidence of any fact or conclusion or circumstance, and may act or refrain from acting and shall be protected in acting or refraining from acting or in exercising any judgment or discretion under any provision of this Indenture in reliance upon, a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer of the Company.

ARTICLE ELEVEN.

CONSOLIDATION, MERGER, ETC.

SECTION 63. Nothing contained in this Indenture or in any bond hereby secured shall prevent any consolidation or merger of the Company with any other corporation or corporations, or a series of consolidations or mergers, or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or transfer of the mortgaged property as an entirety or substantially

as an entirety, subject to the continuing lien of this Indenture, to any other corporation authorized to acquire the same; PROVIDED, however, that no such consolidation, merger, sale, conveyance or transfer shall impair the lien and security of this Indenture or any of the rights or powers hereunder of the Trustee or of the holders of bonds hereby secured, and provided further that upon any such consolidation, merger, sale, conveyance or transfer the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture, shall be expressly assumed by the corporation formed by any such consolidation of the Company with any other corporation, or the corporation into which the Company shall have been merged, or the corporation acquiring the mortgaged property as an entirety, as aforesaid.

SECTION 64. In case of any such consolidation or merger of the Company with any other corporation, or in case of any such sale, conveyance or transfer, and in case the successor corporation shall have assumed, by instrument in writing delivered to the Trustee, the due and punctual payment of the principal and interest of all the bonds and the due and punctual performance and observance of all the covenants and conditions of this Indenture, such successor corporation shall succeed to and be substituted for the Company with the same effect as if it had been named herein as such party of the first part; and upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations of this Indenture, the Trustee shall authenticate and deliver such of the bonds as previously shall have been signed and delivered by the Company to the Trustee for authentication and such of the bonds as thereafter shall be signed and delivered to the Trustee for that purpose. And such successor corporation may cause to be signed and issued, either in its own name or in the name of the Company, any and all bonds thereafter to be issued hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee. All of the bonds so issued shall have in all respects the same benefit of this Indenture as bonds theretofore or thereafter issued in accordance with the terms of this Indenture, as though all of said bonds had been issued at the date of the execution hereof.

The Trustee shall be under no duty to see that such successor corporation shall assume the payment of the bonds issued hereunder or the performance of the covenants or conditions hereof, except as a condition precedent to the vesting in such successor

corporation of the rights and powers of the Company conferred by this Indenture. The Trustee shall be protected in acting hereunder upon the receipt of an opinion of counsel approved by it (who may be counsel for the Company) that any such proposed consolidation, merger or sale complies with the provisions of this Article.

ARTICLE TWELVE.

Miscellaneous.

Section 65. Nothing expressed or mentioned in or to be implied from this Indenture, or in or from the bonds issued hereunder, is intended or shall be construed to give to any person, firm or corporation, other than the parties hereto and the holders of the bonds hereby secured, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; this Indenture and all the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders of the bonds hereby secured, as herein provided.

Section 66. As used in this Indenture, the term "Trustee" shall mean Guaranty Trust Company of New York, and its successor for the time being in the trust hereby accepted by it, and the term "Company" shall mean The Marion Steam Shovel Company (organized under the laws of the State of Ohio by a certificate of incorporation filed April 13, 1927), and its successors and assigns.

This Indenture has been executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

In witness whereof, The Marion Steam Shovel Company, party of the first part, has caused this Indenture to be signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary; and Guaranty Trust Company of New York, party of the second part, in evidence of its acceptance of the trusts hereby created, has caused this Indenture to be signed by a Vice-President, and its corporate seal to be hereunto affixed and attested by an Assistant Secretary, all as of this day and year first above written.

The Marion Steam Shovel Company,
By J. L. Ackerson,
President.

[corporate seal]

Attest:
Hamilton Pell,
Assistant Secretary.

Witnesses as to The Marion Steam Shovel Company:
GEORGE A. BROWNELL
HENRY C. ALEXANDER.

GUARANTY TRUST COMPANY OF NEW YORK,
By C. H. PLATNER,
Vice-President.

[CORPORATE SEAL]
Attest:
E. L. BRICKHOUSE,
Assistant Secretary.
Witnesses as to Guaranty Trust Company of New York:
JOHN R. DOUGLASS
LEO H. BOMBARD.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this 25th day of April, 1927, personally appeared before me, a Notary Public, within and for said County in the State aforesaid, J. L. ACKERSON and HAMILTON PELL, to me known and known to me to be respectively the President and Secretary of THE MARION STEAM SHOVEL COMPANY, one of the corporations which executed the foregoing instrument, who severally acknowledged that they did sign and seal said instrument as such President and Secretary for and on behalf of said corporation and that the same is their free act and deed as such President and Secretary respectively and the free and corporate act and deed of said corporation; and said J. L. ACKERSON, being by me duly sworn, did depose and says: that he resides in New York, State of New York; that he is the President of THE MARION STEAM SHOVEL COMPANY, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

WM. H. BRUDER
Notary Public, Bronx County No. 128
Certificate filed in New York County No. 395
Bronx County Register's No. 2974
New York County Register's No. 9376
[SEAL] Commission Expires March 30, 1929.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this 26th day of April, 1927, personally appeared before me, a Notary Public, within and for said county in the State aforesaid, C. H. PLATNER and E. L. BRICKHOUSE, to me known and known to me to be respectively a Vice-President and an Assistant Secretary of GUARANTY TRUST COMPANY OF NEW YORK, one of the corporations which executed the foregoing instrument, who severally acknowledged that they did sign and seal said instrument as such Vice-President and Assistant Secretary for and on behalf of said corporation and that the same is their free act and deed as such Vice-President and Assistant Secretary respectively and the free and corporate act and deed of said corporation; and said C. H. PLATNER, being by me duly sworn, did depose and say: that he resides in South Orange, State of New Jersey; that he is a Vice-President of GUARANTY TRUST COMPANY OF NEW YORK, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

FREDERICK B. KINGSLEY
Notary Public, Bronx County
Bronx County Clerk's No. 136, Register's No. 2838A
New York County Clerk's No. 656, Register's No. 8458
[SEAL] Commission Expires March 30, 1928.

FREDERICK B. KINGSLEY

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

The undersigned makes oath and says that he is the duly authorized agent of the Guaranty Trust Company of New York, Trustee, the within-named mortgagee; that said mortgage is a valid claim against the within-named mortgagor, The Marion Steam Shovel Company, amounting to three million six hundred thousand dollars ($3,600,000), payable as in the within instrument set forth in gold coin of the United States of America, of the present standard of weight and fineness, together with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually in like gold coin; that the amount of such principal

and interest is evidenced by certain bonds and coupons thereto attached of said mortgagor, The Marion Steam Shovel Company; that said claim is just and unpaid; and that the foregoing mortgage is given in good faith to secure the payment thereof.

C. H. PLATNER.

Subscribed and sworn to before me, a notary public in and for said county, this 26th day of April, 1927.

FREDERICK B. KINGSLEY
Notary Public, Bronx County
Bronx County Clerk's No. 136, Register's No. 2838A
New York County Clerk's No. 656, Register's No. 8458
[SEAL] Commission Expires March 30, 1928.

FREDERICK B. KINGSLEY

RECORDATION DATA.

STATE OF OHIO, } ss.:
MARION COUNTY, }

Presented for Record Apr. 28, 1927, at 10:45 o'clock A. M. Recorded Apr. 28, 1927, in Mtg. Book No. 132, page 127.

CHAS. E. SMITH,
Recorder Marion County, Ohio.

Paid $32.00.

Below is reproduced the collateral trust indenture of the Electrical Securities Corporation to the Guaranty Trust Company of New York, as trustee. It secures the twentieth of a series of issues of collateral trust bonds, the present, or twentieth, series being an issue of $1,000,000 Collateral Trust Sinking Fund 5% Gold Bonds.

FORM 256

COLLATERAL TRUST INDENTURE OF CORPORATION

ELECTRICAL SECURITIES CORPORATION

TABLE OF CONTENTS*

	PAGE
Date and Parties	1
Recitals	1
Form of Bond	1

* The table of contents and the marginal notations hereon were not a part of the Trust Indenture as executed.

PAGE

Form of Coupon 3
Form of Trustee's Certificate 4
Consideration 4
Pledge 4
Collateral Securities pledged 4
"Collateral Securities" defined 5
In Trust 5
Art. 1. Certification and delivery of bonds 5
Art. 2. Lost, destroyed, stolen or mutilated bonds 5
Art. 3. Bonds signed or sealed by former officer 6
Art. 4. Possession and right to pledge 6
Art. 5. Payment of principal and interest 6
Subordination of lien of overdue coupons 6
Art. 6. Taxes, assessments, etc. 6
Art. 7. Registration of bonds 7
Effect of registration upon transfer 7
Effect of registration upon coupons 7
Art. 8. Maintenance of value of Collateral Securities 7
"Public utility stocks" defined 8
Statement as to value of collateral securities to be filed by Company 8
Trustee protected 8
Art. 9. Exchange and substitution of Collateral Securities .. 8
Withdrawal of Collateral Securities in case of excess 8
Art. 10. Requirements for withdrawal of Collateral Securities generally 9
(1) Request in writing 9
(2) Deposit of cash or surrender of bonds for cancellation 9
Requirements for withdrawal of cash so deposited .. 9
(1) Request in writing 9
(2) Deposit of cash or surrender of bonds for of public utility stocks 9
Proviso 9
Art. 11. Method of determining value of Collateral Securities pledged or stocks offered by Company 9
Art. 12. Purchase of bonds upon request of Company 10
Advertisement for proposals 10
Redemption of bonds upon request of Company ... 10
Selection by lot 11
Notice by publication 11
Subordination of bonds called for redemption 11

		PAGE
	Redemption by Trustee when Company has not requested purchase or redemption	11
	Certain rights of Company as holder of bonds	11
Art. 13.	Cancellation of bonds	11
Art. 14.	Sinking Fund	12
	Withdrawal of Collateral Securities or cash upon surrender of bonds	12
Art. 15.	Transfer of Collateral Securities into Trustee's name	12
	Company may exercise all rights of a stockholder as to pledged securities while not in default	12
	Proxies, etc.	12
	Interest upon Collateral Securities	13
Art. 16.	No recourse against individual, stockholder, officer or director	13
Art. 17.	Remedies upon default	13
	Trustee may declare bonds due and payable	13
Art. 18.	Trustee may sell Collateral Securities	13
	At public auction or private sale; giving notice of public auction	14
	Notice to Company of private sale	14
	Application of proceeds of sale	15
	Bondholders may purchase at sale	15
	Trustee's receipt a discharge	15
	Declaration of principal due and payable not condition precedent to right to sell	15
Art. 19.	Delay or omission not a waiver	15
	Bondholders may instruct Trustee to waive default	16
Art. 20.	Termination on full payment by Company	16
Art. 21.	Trustee may assume that there has been no default until notified in writing	16
	Trustee protected	16
	Trustee acting through agents	16
	Trustee to be reimbursed and indemnified	17
	Trustee under no duty to take proceedings unless requested in writing and indemnified	17
	Trustee makes no representations	17
	Trustee under no duty to protect lien	17
	Trustee acting upon advice of counsel	17
	Compensation of Trustee	17
	Trustee to hold money received; interest	18
	Trustee may acquire and hold bonds	18
	Resignation of Trustee	18
	Merger or consolidation of Trustee	18

PAGE
Trustee exempt from giving bond 18
Testimonium 18
Signatures and Seals 19
Acknowledgments 20

Date and Parties.

THIS INDENTURE, dated the second day of January, 1926, made by and between the ELECTRICAL SECURITIES CORPORATION, a corporation of the State of New York, party of the first part (hereinafter called the Company), and GUARANTY TRUST COMPANY OF NEW YORK, a corporation of the State of New York, party of the second part (hereinafter called the Trustee), WITNESSETH THAT:

Recitals.

WHEREAS the Board of Directors of the Company, pursuant to authority delegated to and vested in it, has deemed it necessary to borrow money and to that end has authorized the issue of the bonds below described, and the execution and delivery of this Indenture and the transfer to the Trustee of the securities hereinafter specified:

AND WHEREAS the form of bond, coupon, and trustee's certificate are substantially as follows, to-wit:

Form of Bond.

[FORM OF BOND]

ELECTRICAL SECURITIES CORPORATION

COLLATERAL TRUST SINKING FUND 5% GOLD BOND.

20th Series $1,000,000.

20th Series	20th Series
No. T	No. T
$1,000.	$1,000.

FOR VALUE RECEIVED ELECTRICAL SECURITIES CORPORATION, a corporation of the State of New York, herein called the Company, promises to pay to bearer, or, if this bond be registered, to the registered owner hereof, at its office or agency in the City of New York, on the 1st day of January, 1956,

ONE THOUSAND DOLLARS

in gold coin of the United States of America of or equal to the present standard of weight and fineness and to pay interest thereon in like gold coin at

the rate of five per centum per annum from the first day of January, 1926, upon presentation and surrender at said office or agency of the annexed interest coupons as they severally mature, on the first days of January and July in each year until redemption or payment hereof, all without deduction on account of any tax or governmental charge (except succession and inheritance taxes, income taxes imposed by any state and such portion of any federal income tax as shall be in excess of 2% per annum), which the Company may be required or permitted to pay thereon, or to retain therefrom, by virtue of any present or future law or requirement of the United States of America, or of any state, county, municipality or other taxing authority therein.

This bond is one of a series of one thousand bonds of like date, tenor and amount, numbered consecutively from T 1 to T 1000, inclusive, all of which are equally secured by the pledge with Guaranty Trust Company of New York as Trustee of public utility stocks (as defined in the Indenture hereinafter mentioned), and equally entitled to the benefits and subject to the provisions of a Trust Indenture dated January 2, 1926, by and between the Company and said Trustee, under the provisions of which said stocks are pledged. By the terms of said Indenture the Company covenants that the aggregate market value of the collateral securities pledged thereunder shall not at any time be less than one hundred and twenty-five per centum (125%) of the principal amount of the bonds of this series then outstanding. Reference is hereby made to said Indenture for a description of the collateral securities pledged and for a statement of the terms and conditions on which such collateral securities may be withdrawn, exchanged or substituted, of the rights and remedies of the holders of the bonds with respect thereto and of the terms and conditions upon which the bonds are secured.

This bond may be registered on the books of the Company at its office or agency in the City of New York, and such registration noted hereon, after

which no valid transfer of this bond may be made except on such books until after registered transfer to bearer, whereupon this bond will again become transferable by delivery. It may be again and from time to time registered and transferred to bearer, as the holder or owner may elect, but registration shall in no case affect the annexed interest coupons, which shall continue to be transferable by delivery.

The bonds of this issue are redeemable as a whole or in part at the option of the Company on any interest payment date, upon three weeks' notice published in the Borough of Manhattan, City of New York, as provided in said Indenture, at 103% of the principal amount thereof and accrued interest.

This bond shall not be valid until the certificate endorsed hereon shall have been signed by the Trustee.

In Witness Whereof, said Electrical Securities Corporation has caused its corporate seal to be hereto affixed and this bond to be signed in its name by its President or a Vice-President, and countersigned by its Treasurer, and the coupons attached to be authenticated by a facsimile signature of its Treasurer, this second day of January, 1926.

Electrical Securities Corporation,

By

Countersigned: *Vice-President.*

Treasurer.

[form of coupon]

Form of Coupon.

No. ..... $25.

On the first day of , 19 , Electrical Securities Corporation will pay to the bearer at its office or agency in the City of New York, Twenty-Five Dollars in gold coin of the United States of America without deduction on account of any tax or governmental charge (except succession and inheritance taxes, income taxes imposed by any state and such portion of any federal income tax as shall be in excess of 2% per annum), being six months' interest then due on its Collateral Trust Sinking Fund 5% Gold Bond, No. T.....

This coupon will not be payable if said bond shall have been called for previous redemption.

.....

Treasurer.

[TRUSTEE'S CERTIFICATE]

Form of Trustee's Certificate.

This bond is one of the series of bonds described in the Trust Indenture in this bond referred to.

GUARANTY TRUST COMPANY OF NEW YORK,
Trustee,

By
Assistant Secretary.

NOW THEREFORE, the Company in consideration of the premises and of one dollar to it paid by the Trustee, the receipt whereof is hereby acknowledged, and in order to secure due and punctual payment of said bonds and of the interest thereon, does hereby sell, assign, transfer and pledge to, and agree forthwith to deposit with, the party of the second part, Trustee as herein provided, and its successors in the Trust:

Consideration.

Pledge.

Collateral Securities pledged.

1,000 Shares $7 Cumulative Preferred Stock American & Foreign Power Company, Inc.
1,000 Shares Capital Stock Brooklyn Edison Company, Inc.
1,000 Shares $7 Prior Lien Preferred Stock Central & South West Utilities Company.
1,000 Shares Capital Stock Commonwealth Edison Company.
1,000 Shares Capital Stock The Detroit Edison Company.
1,000 Shares $7 Cumulative Preferred Stock Electric Power & Light Corporation.
1,000 Shares $8 Series "A" Cumulative Preferred Stock General Gas & Electric Corporation.
1,000 Shares $6 Series "C" Cumulative Preferred Stock Metropolitan Edison Company.
1,000 Shares $6 Cumulative Preferred Stock North American Edison Company.
1,000 Shares Common Stock Public Service Corporation of New Jersey.
1,000 Shares 7% Prior Preference Stock Standard Gas & Electric Company.
1,000 Shares 7% Cumulative Preferred Stock Utilities Power & Light Corporation.

Such pledged stocks, and any additions thereto and substitutes therefor, being hereinafter referred to as the "Collateral Securities";

"Collateral Securities" defined.

In trust.

IN TRUST, NEVERTHELESS, subject to the provisions hereof, for the equal *pro rata* benefit and security of the holders of said bonds and coupons, at whatever period the bonds may be certified or issued, without any preference or priority of one bond over another, and also without preference as between principal and interest;

Covenant clause.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, and the Company, for itself and its successors, hereby covenants and agrees with the Trustee for the benefit of those who shall hold the bonds and coupons, or any of them, as follows:

Certification and delivery of bonds.

ARTICLE 1. Bonds for the aggregate principal amount of One Million Dollars ($1,000,000) shall be certified and delivered by the Trustee at once or at any time or times hereafter in accordance with the order or orders of the Company evidenced by a writing or writings signed by its President or a Vice-President.

Lost, destroyed, stolen or mutilated bonds.

ARTICLE 2. Upon receipt by the Company and the Trustee of evidence satisfactory to them of the loss, destruction, theft or mutilation of any bond hereby secured and upon receipt of indemnity satisfactory to them, and upon surrender and cancellation of such bond, if mutilated, the Company may execute, and the Trustee may certify and deliver, a new bond of like tenor and principal amount to be issued in lieu of such lost, destroyed, stolen or mutilated bond.

Bonds signed or sealed by former officer.

ARTICLE 3. In case any of the officers who shall have signed or sealed any of the said bonds shall cease to be such officers of the Company before the bonds so signed and sealed shall have been actually certified by the Trustee or delivered by the Company, such bonds, nevertheless, may be issued, certified and delivered with the same force and effect as though the person or persons who signed or sealed such bonds had not ceased to be such officer or officers of the Company.

Possession and right to pledge.

ARTICLE 4. The Company covenants that it is the true and lawful owner of each and all of the Collateral Securities, and that it has good right and authority to sell, assign, transfer and pledge the same to the Trustee as herein provided.

Payment of principal and interest.

ARTICLE 5. The Company covenants that it will pay the principal of all bonds secured hereby according to the terms thereof when the principal shall become or be declared due and payable, and that it will pay the interest thereon according to the terms of the bonds and coupons until the principal is paid. As the coupons annexed to the bonds are paid they shall be canceled, and no purchase of any coupons nor any advance or loan thereon nor redemption thereof by or on behalf of the Company shall preserve the lien of such coupons, after the maturity thereof, upon the Collateral Securities as against the holder or holders of the other bonds and coupons or any of them.

Subordination of lien of overdue coupons.

Taxes, assessments, etc.

ARTICLE 6. The Company covenants that it will from time to time pay and discharge all taxes, assessments and other governmental charges of whatsoever kind lawfully imposed upon the Collateral Securities, or upon the income or profits thereof, or upon the interest or estate of the Trustee therein, in order that the lien afforded by these presents shall be fully preserved in respect to such Collateral Securities; provided, however, that the Company shall have the right to contest by legal proceedings any such tax, assessment or other governmental charge, and pending such contest may delay or defer the payment thereof.

Registration of bonds.

ARTICLE 7. The Company shall keep at its office or agency in the City of New York, books for the registration and transfer of the principal of the bonds, which books shall at all times be open for inspection by the Trustee, and upon presentation for such purpose the Company shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred therein the principal of any of such bonds.

Effect of registration upon transfer.

The holder of any bond may have the ownership thereof as to principal registered on said books and such registration shall be noted thereon. After such registration no transfer shall be valid unless made on said books by the registered owner in person, or by attorney duly authorized in writing, and similarly noted on the bond; but the same may be discharged from registration by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored, and such bond may again from time to time be registered or transferred to bearer as before. Such registration shall not, however, affect the negotiability of the coupons, and every such coupon shall continue to be transferable by delivery merely and shall remain payable to bearer, and payment thereof to the bearer shall fully discharge the Company in respect of the interest therein mentioned, whether the bond be registered or not.

Effect of registration upon coupons.

Maintenance of value of Collateral Securities.

ARTICLE 8. The Company covenants that the value of the Collateral Securities pledged hereunder shall be equal at all times at market price to not less than 125% of the aggregate principal amount of the bonds outstanding hereunder and that from time to time as it may become necessary so to do, in order to maintain such value, it will deposit with the Trustee in pledge hereunder shares of public utility stocks of sufficient value at market price to make the total value of the Collateral Securities at market price equal to 125% of the aggregate principal amount of bonds outstanding hereunder. For the purposes of this Article, bonds for the purchase or redemption of which funds are available in the hands of the Trustee under any of the provisions of this Indenture shall be deemed not to be outstanding hereunder.

"Public utility stocks" defined.

The term "public utility stocks," as used in this Indenture, includes shares of the preferred and/or common stock of corporations directly engaged in the operation of properties of the class commonly known as public utilities and corporations whose principal assets consist of shares of stocks, bonds or other securities of companies operating such properties.

Statements as to value of Collateral Securities to be filed by Company.

The Company covenants that beginning in January, 1927, it will within the first fifteen days of each January and July file with the Trustee a writing signed by the Treasurer or Assistant Treasurer and countersigned by the President or a Vice-President of the Company stating the then current market values of the Collateral Securities and stating separately the value of each item thereof. The Trustee may rely on such statements as showing the facts, but it shall not be required to do so.

Trustee protected.

Exchange and substitution of Collateral Securities.

ARTICLE 9. While not in default in the performance of any of its covenants in this Indenture contained, the Company may at any time and from time to time make such exchanges and substitutions of the Collateral Securities as it may see fit, provided that the market value of the securities substituted shall be equal to or greater than the market value of the securities withdrawn, and further provided, that all Collateral Securities pledged at any time hereunder shall be certificates for shares of public utility stocks as defined in Article 8 hereof.

Withdrawal of Collateral Securities in case of excess.

While not in default as aforesaid, the Company may also on the 15th day of January and/or the 15th day of July in any year beginning with the month of January in the year 1927, if the aggregate market value of the Collateral Securities be then in excess of the 125% requirement contained in Article 8 hereof, withdraw Collateral Securities of market value equal to such excess. In exercising its rights under this Article 9 the Company may act by its President, a Vice-President or any officer authorized thereto by a general or special resolution of its Board of Directors.

Requirements for withdrawal of Collateral Securities generally—

ARTICLE 10. While not in default in the performance of any of its covenants in this Indenture contained, the Company shall have the right at any time and from time to time to withdraw from pledge hereunder such of the Collateral Securities as the Company may specify on (1) filing with the Trustee a writing signed by its President, a Vice-President or an officer duly authorized by a general or special resolution of its Board of Directors or Executive

(1) Request in writing;

Committee, requesting such withdrawal, and (2) depositing with the Trustee cash, or surrendering to the Trustee for cancellation bonds of this issue, to the amount of 80% of the market value of the Collateral Securities to be withdrawn; for the purposes of such surrender, such bonds shall be valued at par. Cash so deposited with the Trustee shall be available for the purchase or redemption of bonds of this issue in the manner provided in Article 12 hereof.

(2) Deposit of cash or surrender of bonds for cancellation.

While not in default as aforesaid, the Company may at any time and from time to time withdraw any cash so deposited on (1) filing with the Trustee a writing signed by its President, a Vice-President or an officer duly authorized by a general or special resolution of its Board of Directors or Executive Committee, requesting such withdrawal, and (2) depositing with the Trustee for cancellation bonds of this issue in principal amount equal to the amount of cash to be withdrawn, or pledging with the Trustee hereunder shares of public utility stocks (as defined in Article 8 hereof), the market value of which is equal to 125% of the amount of cash to be withdrawn; provided, however, that the Company may not withdraw any cash which it shall have previously requested the Trustee to use for the purchase or redemption of bonds under the provisions of Article 12 hereof.

Requirements for withdrawal of cash so deposited—

(1) Request in writing;

(2) Deposit of bonds for cancellation or pledge of public utility stocks.

Proviso.

ARTICLE 11. For the purpose of determining the market value of the Collateral Securities pledged hereunder and/or stocks offered by the Company in substitution for such Collateral Securities or for deposited cash, the Trustee's determination of such market value shall be conclusive upon the Company. The Trustee may, without incurring any liability in the matter, itself determine the pertinent question or questions as to market value or values; or it may, at the expense of the Company, appoint for the purpose of investigating and reporting to it thereon any person believed by it to be disinterested and competent therefor. In any case of such appointment, the market value or values under investigation shall be taken as determined by the report

Method of determining value of Collateral Securities pledged or stocks offered by Company.

of the appointee except that the Trustee may in its discretion reduce but not increase the values stated in such report.

Purchase of bonds upon request of Company. Advertisement for proposals.

ARTICLE 12. Whenever the Company, by a writing signed by its President, a Vice-President or an officer duly authorized by a general or special resolution of its Board of Directors or Executive Committee, shall so request, the Trustee shall, provided there shall be on deposit with it a sufficient sum available for the purpose, publish an advertisement twice in each of two successive calendar weeks in one or more daily newspapers published in the City of New York, inviting proposals for the sale to it of bonds secured hereby to an amount which the sum specified in such writing will suffice to purchase, and so far as possible shall purchase the required bonds from among those offered at any price or prices not exceeding one thousand and thirty dollars ($1,030) and accrued interest per bond, always purchasing first the bonds offered at the lowest price or prices. If the bonds offered exceed in number the bonds required to be purchased, the bonds purchased shall be taken from the respective offerings in such manner and proportions as to the Trustee shall seem fairest in the interest of all parties concerned; and other things being equal, an offer embracing all or any part of a specified number of bonds shall be preferred to one made upon the condition that all or none of the bonds offered shall be accepted.

Redemption of bonds upon request of Company.

Whenever the Company, by a writing signed by its President, a Vice-President or an officer duly authorized by a general or special resolution of its Board of Directors or Executive Committee, shall so request, the Trustee shall use any funds on deposit with it available for the purpose in redeeming bonds secured hereby upon the next interest day at the price of one thousand and thirty dollars ($1,030) and accrued interest per bond, and, in such case, the Trustee shall, if less than all of the bonds outstanding are to be redeemed, select the particular bonds for redemption by lot, and, in any event, shall give notice of their redemption by pub-

Selection by lot.

lication twice in each of three successive calendar weeks in one or more daily newspapers published in the Borough of Manhattan, City of New York. The first publication of such notice shall be made not less than twenty-one days before the day fixed for redemption. If any bonds so selected for redemption shall not be presented on the day fixed therefor, the Trustee shall hold the money available for the redemption of such bonds for account of the holders thereof and pay the same out only upon such bonds when presented and surrendered, and after said interest day, interest upon such bonds shall cease and such bonds shall not be entitled to the benefit of the security afforded by these presents.

Notice by publication.

Subordination of bonds called for redemption.

When money available for the purchase or redemption of bonds shall have remained on deposit with the Trustee for one year, and the Company shall not have requested the Trustee to use such money in purchasing or redeeming bonds, the Trustee shall use the amount so remaining on deposit in redeeming bonds of this issue in the manner provided above.

Redemption by Trustee when Company has not requested purchase or redemption.

The Company may surrender bonds of this issue to the Trustee for cancellation, or may offer such bonds to the Trustee for purchase as provided in this Article 12, whether such bonds were part of the original issue unsold, or whether they have been issued and repurchased by the Company, and upon any offer by the Company to the Trustee, the Company shall stand upon the same footing, in all respects, as any other holder of such bonds.

Certain rights of Company as holder of bonds.

ARTICLE 13. All bonds surrendered to the Trustee for cancellation, or purchased or redeemed by the Trustee under any of the provisions of this Indenture, shall be forthwith canceled and cremated by the Trustee and a certificate of such cremation shall be delivered to the Company. No bonds shall be issued or reissued in lieu of any so canceled.

Cancellation of bonds.

ARTICLE 14. In order to provide a sinking fund for the retirement of bonds of this issue, the Company covenants that it will, either by surrendering bonds to the Trustee for cancellation or by providing for the purchase or redemption of bonds in

Sinking fund.

the manner set forth in Article 12 hereof, retire or cause to be retired at least fifteen of such bonds during the twelve months period ending the last day of December, 1931, and that it will in the same manner retire or cause to be retired a like number of such bonds during each twelve months period thereafter; provided, however, that if the Company shall retire or redeem bonds of this issue prior to January 1, 1932, or shall retire or redeem bonds at any time in excess of the current sinking fund requirement, the retirements so made shall be applied in discharge, *pro tanto,* of the Company's next succeeding sinking fund obligation or obligations.

Withdrawal of Collateral Securities or cash upon surrender of bonds.

Upon surrendering bonds to the Trustee for cancellation under the requirements of this Article, the Company shall be permitted to withdraw Collateral Securities or cash in the manner provided in Article 10 hereof.

Transfer of Collateral Securities into Trustee's name.

ARTICLE 15. The Trustee may in its discretion at any time transfer into its name as Trustee hereunder or into the name of its nominee, any or all of the shares of stock embraced in the Collateral Securities now or hereafter pledged hereunder. So long as it is not in any default hereunder known to the Trustee, the Company shall be entitled to exercise all the rights of a stockholder as to each and every share of stock pledged hereunder, including especially the power to vote on the pledged shares; and to this end, in any case where shares shall have been transferred to the name of the Trustee or its nominee as aforesaid, the Trustee shall (the Company at the time being in no default known to the Trustee) execute and deliver, or cause to be executed and delivered, to the Company on demand of its President, a Vice-President, Treasurer or Assistant Treasurer from time to time, such proxies or powers of attorney as may be necessary or appropriate in the premises, the same to be drawn in favor of such person or persons as shall be designated by the Company's officer in his request therefor.

Company may exercise all rights of a stockholder as to pledged securities while not in default.

Proxies, etc.

Collateral Interest upon Securities.

So also, while it is in no default hereunder known to the Trustee, the Company shall be entitled to receive and hold to its own use all dividends paid

on the Collateral Securities; but upon any default by the Company the right to such dividends shall pass from the Company and vest in the Trustee; and the latter shall be entitled to receive and hold as a part of the collateral security all such dividends as may be paid during the continuance of the default. From time to time on the written request of the President, a Vice-President, Treasurer or Assistant Treasurer of the Company, while the Company is not in any default known to the Trustee, the Trustee shall, as to any and all shares of pledged stock that stand in the name of the Trustee or its nominee, execute and deliver, or cause to be executed and delivered to the Company, suitable orders for the payment to it of such dividends.

No recourse against individual, stockholder, officer or director.

ARTICLE 16. No recourse shall be had for the payment of any principal or interest of any bonds issued hereunder against any individual or any stockholder, officer, or director of the Company, and the respective holders of the bonds of this issue shall be bound by the provisions of this Article 16.

Remedies upon default.

ARTICLE 17. If the Company shall fail to pay the coupons, or any of them, according to the tenor thereof, on the presentation and surrender of the same, or shall fail faithfully to observe any of the requirements made of it by these presents, and any such failure shall continue for a period of sixty days after written notice thereof given by the Trustee or any bondholder to the Company, it shall be lawful for the Trustee immediately, or at any time thereafter while such default continues, without demand upon the Company, to declare all the outstanding bonds to be due and payable, whereupon all of such bonds, together with all accrued interest thereon, shall become immediately due and payable.

Trustee may declare bonds due and payable.

Trustee may sell Collateral Securities—

ARTICLE 18. If the Company shall fail to pay the bonds secured hereby, or any of them, when they fall due and payable, or shall fail to pay the coupons or any of them according to the tenor thereof, on the presentation and surrender of the same respectively, or shall fail faithfully to observe any of the requirements made of it by these presents, and any

such failure shall continue for a period of sixty days after written notice thereof given by the Trustee, or by any bondholder, to the Company, it shall be lawful for the Trustee immediately or at any time or from time to time thereafter while said default continues without demand upon the Company, to sell and dispose of for cash, all the Collateral Securities, or such number or portion thereof as the Trustee may deem proper, either at public auction in said City of New York, or at private sale; having first, in all cases where the sale is made at public auction, given such notice thereof as the Trustee may think reasonable. In cases of private sales, the Trustee is hereby fully authorized and empowered to sell at such prices as it may deem fair and reasonable, always endeavoring to realize as much as possible from the sales; but the Trustee agrees that before making any private sale hereunder of the Collateral Securities or any of them, it will, if the Company shall at the time have an office in New York City known to the Trustee, inform the Company, by letter addressed to it at such office and mailed thereto, of the pending sale, including the contemplated purchase price, to the end that the Company or some of its officers may have an opportunity to advise in the matter; but it is distinctly understood that the ultimate decision as to the question of making the sale and the terms thereof shall rest solely with the Trustee. In order to transfer to and vest absolutely in the purchaser or purchasers at such sales the title and ownership, both legal and equitable, of the Collateral Securities purchased by them respectively, the Trustee is hereby further authorized and empowered, either in its own name or in the name of the Company, as may best facilitate the transfer, to make, execute, acknowledge, and deliver all such assignments, powers of attorney, or other instruments, as may be necessary or proper, and any sale made as aforesaid shall be a perpetual bar, both in law and in equity, against the Company and all persons asserting any claim by, through, or under it, to the Collateral Securities so sold, or any right, title, or interest therein; and for the purpose aforesaid, the Trustee is hereby

At public auction or private sale: giving notice of public auction.

Notice to Company of private sale.

constituted irrevocably the attorney of the Company. Out of the proceeds arising from such sale or sales, the Trustee shall first defray the expenses thereof, together with its just and lawful charges for services and expenses, including reasonable allowance for attorney and counsel fees; and the balance of said proceeds, together with any other moneys which may then be held by the Trustee under any of the provisions of this instrument, shall be applied first to the payment of the principal of the bonds of this issue at the time outstanding (whether then or thereafter payable) and the interest thereon accrued to the time of the application and remaining unpaid, all without preference of one bond over another or of interest over principal, or *vice versa,* and any residue then remaining shall be paid over to the Company or its assigns, together with all the Collateral Securities, if any, remaining undisposed of.

Application of proceeds of sale.

It is hereby declared and agreed that any one or more of the holders of the bonds of this issue or any person in his or their behalf, other than the Trustee, shall have the right to purchase the Collateral Securities at any sale made as aforesaid, and that the receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money.

Bondholders may purchase at sale.

Trustee's receipt a discharge.

No declaration of principal to be immediately due and payable shall be a condition precedent to any exercise of the Trustee's right to make a sale or sales of the Collateral Securities, the Company hereby expressly covenanting that, in case of any default or failure on its part occurring and continuing as hereinbefore provided, a right to sell the Collateral Securities or any of them as above stipulated shall *ipso facto* arise, the same to be exercised by the Trustee through the power of sale hereinbefore contained or through the cumulative remedy of judicial proceedings.

Declaration of principal due and payable not condition precedent to right to sell.

ARTICLE 19. No delay or omission by the Trustee in exercising the rights and powers herein granted shall be held to exhaust or impair such rights and powers, or be construed as a waiver thereof; but the

Delay or omission not a waiver.

holder or holders of four-fifths in amount of the bonds at the time outstanding may, by an instrument in writing signed and acknowledged by them, at any time waive, or instruct the Trustee to waive, any default on the part of the Company other than a default in the payment of principal upon the final date of maturity specified in said bonds; provided always that a waiver of default in the payment of interest shall be construed only as postponing to a time specified the time for the payment of the overdue interest, and that no waiver of any kind shall extend to or be taken to affect any subsequent default, or impair the rights resulting therefrom.

Bondholders may instruct Trustee to waive default.

ARTICLE 20. Upon the payment by the Company of all the bonds secured by this Indenture, and of all interest accrued thereon, and of all proper charges, including the compensation and expenses of the Trustee (any bond to be deemed paid if money has been deposited with the Trustee for its purchase or redemption), then the right to the possession of the Collateral Securities then remaining unsold in the possession of the Trustee, including any moneys held as part of the security, shall revert to and vest in the Company, its successors and assigns, and in such event the Trustee agrees to redeliver all of the said Collateral Securities to the Company.

Termination on full payment by Company.

ARTICLE 21. The Trustee may for all purposes of this Indenture assume, until it shall receive notice to the contrary, that there has been no default hereunder; and the Trustee shall not be required to take notice of any default hereunder unless specifically notified in writing of such default by one or more holders of bonds hereby secured. In acting upon or with reference to any bonds, request, consent, or other paper believed by it to be genuine and to have been signed or presented by the proper person, the Trustee shall be protected in so acting. The Trustee shall not be liable or responsible for acts or neglects hereunder except for its own gross negligence or wilful default, and shall not be responsible or liable for or by reason of any default or omission of any agent, attorney or employee by it employed

Trustee may assume that there has been no default until notified in writing.

Trustee protected.

Trustee acting through agents.

hereunder provided such agent, attorney or employee be selected with reasonable care. The Trustee shall be reimbursed and indemnified by the Company against any liability or damage it may sustain or incur in the premises.

Trustee to be reimbursed and indemnified.

The Trustee shall be under no obligation to take any proceedings for the purpose of enforcing the provisions of this Indenture or otherwise protecting the interests of the bondholders hereunder unless requested in writing so to do by twenty-five per cent in amount of the holders of bond hereunder, nor unless it shall have been first indemnified to its satisfaction in respect thereof.

Trustee under no duty to take proceedings unless requested in writing and indemnified.

The Trustee makes no representations as to the validity of this Indenture or the security hereby afforded, and shall not be liable for any recital of fact herein contained or in the bonds hereby secured, or have any responsibility as to the validity or value of the Collateral Securities or as to the execution or acknowledgment hereof.

Trustee makes no representations.

The Trustee shall be under no obligation to see to the recording or filing of this Indenture, if such recording or filing shall be necessary, or to take any action or to do any act in respect to any taxes which may be assessed against the property pledged hereunder or to do any other act for protecting, perpetuating or keeping good the lien hereof upon the whole or any portion of the property pledged hereunder for the payment of said bonds hereby secured; but the Company, its successors and assigns shall and will, from time to time, do all things needful in that behalf.

Trustee under no duty to protect lien.

The Trustee may in its discretion advise with counsel to be selected and employed by it and anything done or suffered in good faith by the Trustee in accordance with the opinion of such counsel shall be conclusive in favor of the Trustee and binding upon the Company and all holders of bonds hereby secured.

Trustee acting upon advice of counsel.

The Trustee shall be entitled to reasonable compensation (which shall not be limited by any law relating to the compensation of trustees of an express trust) for all services rendered by it in the

Compensation of Trustee.

execution of the trust hereby created, which compensation, together with all reasonable expenses of the Trustee including counsel fees, the Company agrees to pay upon demand of the Trustee and the Trustee shall have a lien under this indenture preferential to the bonds hereby secured upon the Collateral Securities and cash deposited with it hereunder.

Trustee to hold money received; interest.

Any money received by the Trustee under any provision of this Indenture shall be held by it until it is required to pay out the same in conformity herewith, such interest being allowed on the money as the Trustee shall at that time be allowing on other similar funds.

Trustee may acquire and hold bonds.

The Trustee may acquire or hold bonds and coupons hereby secured with the same right which it would have if it were not Trustee.

Resignation of Trustee.

The Trustee may resign upon giving ten days' notice to the Company, and, in case the office of Trustee shall become vacant for any cause, the Company may appoint any trust company doing business in the City of New York, as a new trustee to fill such vacancy.

Merger or consolidation of Trustee.

Any corporation into or with which the Trustee or any successor trustee may be merged or consolidated or any corporation resulting from any merger or consolidation to which the Trustee or any successor trustee may be a party or any corporation succeeding to the property and business of the Trustee or of any successor trustee shall be the successor of the Trustee hereunder without the execution or filing of any instrument or the performance of any further act on the part of any of the parties hereto.

Trustee exempt from giving bond.

The Trustee and every successor trustee shall be exempt from giving any bond or surety to cover the execution of the trust and powers herein contained or otherwise in respect of the premises.

Testimonium.

IN WITNESS WHEREOF, said Electrical Securities Corporation has caused these presents to be signed in its name and behalf, and its corporate seal to be hereto affixed by its President or a Vice-President, and attested by its Secretary or an Assistant Secre-

tary, and said Guaranty Trust Company of New York, to evidence its acceptance of the trust hereby created, has caused the same to be signed in its name and behalf and its corporate seal to be hereto affixed by its President or a Vice-President, and attested by its Secretary or an Assistant Secretary, all of said officers being hereto duly authorized.

Signatures and Seals.

ELECTRICAL SECURITIES CORPORATION,
[CORPORATE SEAL] By C. N. MASON
President.

Attest:
L. W. OSBORNE
Secretary.

GUARANTY TRUST COMPANY OF NEW YORK,
[CORPORATE SEAL] By C. H. PLATNER
Vice-President.

Attest:
C. M. SCHMIDT
Asst. Secretary.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

Acknowledgments.

On the 16th day of February, in the year one thousand nine hundred and twenty-six, before me personally came C. N. MASON, to me known, who, being duly sworn, did depose and say that he resides in New York, N. Y.; that he is the President of ELECTRICAL SECURITIES CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

SUSAN L. SANBORN
[NOTARIAL SEAL]
Notary Public, New York County
Clerk's No. 565, Register's No. 7477
Commission Expires March 30, 1927.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the 16th day of February, in the year one thousand nine hundred and twenty-six, before me

personally came C. H. PLATNER, to me known, who, being by me duly sworn, did depose and say that he resides in South Orange, N. J.; that he is a Vice-President of GUARANTY TRUST COMPANY OF NEW YORK, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

JAMIE H. KERR
Notary Public, Bronx County
[NOTARIAL SEAL]
Bronx County Clerk's No. 153
Bronx County's Register's No. 2640A
New York County Clerk's No. 672
New York County Register's No. 6088A
Commission Expires March 30, 1926
JAMIE H. KERR

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11. Nature of Trust Indenture

The trust indenture is, in its essential features, the same as a mortgage, but is usually much longer. The first mortgage trust deed of the Marion Steam Shovel Company, reproduced elsewhere, is relatively brief, while the collateral trust deed of the Electrical Securities Corporation, also reproduced elsewhere in this volume, is unusually brief. It is apparent that to issue a mortgage of even this length to each bondholder would be a troublesome arrangement. Hence the desirability of issuing a single mortgage to a trustee whose duty it is to see that the interests of the bondholders are protected and, in general, to do for the bondholders what they would be expected to do for themselves but for the intervention of the trustee. The title to the property mortgaged is vested in the trustee in trust, thus enabling him to act to conserve the interests of the bondholders whenever such action becomes necessary. This plan provides for concentration of managements and responsibility not otherwise obtainable.

12. Contents of Trust Indenture

Although trust deeds vary greatly in length they conform rather closely to a common plan. They are invariably formally worded documents. The printed copies of the indenture begin with a table of contents, but this is not in the indenture as executed or recorded. For this and other matter illustrative of the following outline, see the first mortgage indenture of the Marion Steam Shovel Company (see page 568), also the collateral trust mortgage of the Electrical Securities Corporation (see page 628). An analysis of the first of these documents shows its contents to conform to the following outline:

1. Date of indenture.
2. Parties to indenture.
3. Preample—containing recitals of purpose of proposed issue and authority therefor.
4. Text of bond, form of interest coupon, and trustee's certificate.
5. Consideration for transfer of title to the trustee and grant thereof.
6. Description of property transferred.
7. Trust reservation providing for equal protection of all bondholders.
8. Reconveyance of mortgaged property to company.
9. Form, execution, registration and exchange of bonds.
10. Particular covenants of company.
11. Sinking fund.
12. Redemption of bonds.
13. Release of property from lien of the indenture.
14. Supplemental indentures.
15. Remedies on default.
16. Waiver of individual liability of various persons.
17. Evidence of rights of bondholders and ownership of bonds.
18. Powers and duties of trustee.
19. Provisions regarding consolidation and merger.
20. Miscellaneous.
21. Signatures and seals of parties to indentures.
22. Acknowledgments.
23. Recordation data.

A comparison of the provisions of the collateral trust deed of the Electrical Securities Corporation (see page 628) with

the above will indicate certain differences of content and arrangement. An outline of these follows:

1. Date of indenture.
2. Parties to indenture.
3. Preamble—containing recitals as to authority for proposed bond issue. Whereas the indenture of the Marion Steam Shovel Company states that the company "desires to provide funds and acquire property for its lawful corporate purposes," the indenture of the Electrical Securities Corporation merely states that the board of directors has "deemed it necessary to borrow money."
4. Text of bond, form of interest coupon, and trustee's certificate.
5. Consideration for pledge of securities to the trustee. This differs from the corresponding provision of the indenture of The Marion Steam Shovel Company. In case of collateral in form of securities the trustee is given actual possession, while in case of real estate mortgages the mortgagor retains possession and use of the property.
6. Description of securities pledged and deposited.
7. Trust reservation providing for equal protection to all bondholders.
8. Covenant relative to certification, delivery, registration, redemption, etc., of bonds. This conforms in a general way to 9 in the above outline of the indenture of the Marion Steam Shovel Company, but goes much farther, the provisions of this covenant constituting the entire remainder of the document with the exception of the testamonium and signatures. These covenant provisions are as follows:
   - (*a*) Certification and delivery of bonds. (Art. 1.)
   - (*b*) Lost, destroyed, stolen or mutilated bonds. (Art. 2.)
   - (c) Effect of signature of former officer. (Art. 3.)
   - (*d*) Right of company to pledge securities. (Art. 4.)
   - (*e*) Payment of principal and interest and treatment of coupons. (Art. 5.)
   - (*f*) Taxes and assessments. (Art. 6.)
   - (*g*) Registration. (Art. 7.)
   - (*h*) Maintenance of market value of securities pledged at 125% of aggregate principal amount of bonds outstanding. (Art. 8.)
   - (*i*) Substitution and withdrawal of securities. (Arts. 9 and 10.)
   - (*j*) Method of valuing securities pledged. (Art. 11.)
   - (*k*) Repurchase of bonds by company. (Art. 12.)

(*l*) Cancellation of bonds. (Art. 13.)
(*m*) Sinking fund provisions. (Art. 14.)
(*n*) Rights of company as to pledged securities. **(Art. 15.)**
(*o*) Waiver of individual liability. (Art. 16.)
(*p*) Remedies on default. (Art. 17.)
(*q*) Sale of pledged securities. (Art. 18.)
(*r*) Waiver of default. (Art. 19.)
(*s*) Termination of trust. (Art. 20.)
(*t*) Rights, duties, compensation, etc., of trustee. **(Art. 21.)**

9. Testimonium.
10. Signatures and seals of parties to indenture.
11. Acknowledgment.

Provisions of Trust Indenture

13. Bond Form

The best understanding of the form and content of bonds for which provision is found in the trust indenture may be had by referring to the forms shown on pages 568 to 628, and pages 628 to 650. Note that the First Mortgage 6% Twenty-Year Sinking Fund Gold Bonds of the Marion Steam Shovel Company, dated April 1, 1927, must be signed by the president and countersigned by the secretary, whereas the Collateral Trust Sinking Fund 5% Gold Bonds of the Electrical Securities Corporation, dated January 2, 1926, are signed by a vice-president and countersigned by the treasurer.

All bonds are executed under seal.

The text of the bond contains reference to the trust indenture in accordance with the provisions of which it is issued, stating the name and address of the trustee and also indicating the number of bonds and amount thereof in the series of which it is one, all of which are equally secured by the property transferred or pledged. Thus the trust indenture of the Electrical Securities Corporation provides that the text of each bond in the 20th series shall read as follows (see page 632):

This bond is one of a series of one thousand bonds of like date, tenor and amount, numbered consecutively from T 1 to T 1,000,

inclusive, all of which are equally secured by the pledge with Guaranty Trust Company of New York as Trustee of public utility stocks (as defined in the Indenture hereinafter mentioned), and equally entitled to the benefits and subject to the provisions of a Trust Indenture dated January 2, 1926, by and between the Company and said Trustee, under the provisions of which said stocks are pledged.....

Other provisions found in the text of the bond are as follows:

1. Promise of issuing company to pay to bearer, or if the bond is registered, to the registered owner, the amount specified in the bond at the date specified. This amount is usually the par value of the bond, as, $1,000.
2. If the bond is a gold bond it is provided that the payment shall be in gold coin of the United States of America of or equal to the present standard of weight and fineness; also that the interest shall be paid in the same gold coin, at the rate specified, upon presentation and surrender of the coupons at the proper dates.
3. Provision may be found to the effect that interest shall be paid without deduction for taxes or governmental charges, with certain expressed exceptions, or as shall not exceed a certain amount, as 2%.
4. Special provision for reimbursement of taxes to residents of specified states. See provision in bond of the Marion Steam Shovel Company, pages 575-576.
5. Provision for redemption of bonds. See provision in bond of the Marion Steam Shovel Company, page 576.
6. Procedure in case of default.
7. Provision for interchange of definitive bonds of one denomination for those of another denomination.
8. Waiver of recourse against stockholders or officers of issuing company.
9. Provision for registration of bonds.
10. A statement to the effect that the bond becomes valid only upon endorsement of the certificate thereon by the trustee.
11. A formal statement as to the signatures to be attached to the bond and as to the facsimile signature required on the coupons.

These provisions are usually a summary of the more important provisions of the trust deed, although some provisions found in the bond do not appear elsewhere in the trust deed.

14. Interest Coupon

Immediately following the bond form in the trust deed appears the form of interest coupon. See pages 577 and 633 for forms of coupon prescribed in the indentures of the Marion Steam Shovel Company and the Electrical Securities Corporation, respectively. Note that spaces for the coupon numbers, dates of payment, numbers of bonds and facsimile signatures are left vacant in the form prescribed. Each coupon is a note payable, negotiable and payable to bearer. In case of fully registered bonds, that is, bonds registered as to both principal and interest, the interest coupons are detached, the interest payments being made by check mailed to the registered holder. Most bonds may be registered as to principal but registration as to interest is less frequent.

15. Trustee's Certificate

The requirement that the trustee certify to each bond issued is part of the duties prescribed for him in the trust deed. Thus the indenture of the Marion Steam Shovel Company's First Mortgage 6% Twenty-year Sinking Fund Gold Bonds dated April 1, 1927, provides (Art. 1, Sec. 2) that "bonds so executed may from time to time be delivered to the trustee for authentication, and the trustee shall authenticate and deliver the same in accordance with the provisions of this Indenture, and not otherwise." For forms of trustee's certification see pages 578 and 634.

It is usually provided in the indenture that the authentication of bonds by the trustee renders him in no way responsible for the uses to which they may be put. See Article 21 of the indenture of the Electrical Securities Corporation, pages 646-648.

The bond itself usually provides that it shall not be valid until endorsed or authenticated by the trustee.

16. Granting Clause and Property Transferred or Pledged

In some cases the description of the property transferred or pledged requires many pages in the trust deed. Illustra-

tive of the description of real estate transferred is the indenture of the Marion Steam Shovel Company, pages 579 to 586. The description must be such as to satisfy all requirements of recording. It is the duty of the banker who underwrites an issue of bonds to secure adequate legal assistance in investigating the validity of title to real estate. In the descriptive circular issued to prospective investors it is usual to find a statement such as the following:

All legal matters in connection with this issue under the direction of Messrs. ....., of ....., for the bankers and Messrs. ....., of ....., for the company.

In case of collateral trust indentures the securities pledged are listed in the indenture. See page 634 for list of securities deposited by the Electrical Securities Corporation to secure the 20th series of its Collateral Trust Sinking Fund 5% Gold Bonds.

Preceding the description of the property transferred, in case of mortgage bonds, is the granting clause, to the effect that "to secure the payment of the principal and interest of all the bonds at any time outstanding under this Indenture, and the faithful performance and observance of all the covenants and conditions hereinafter set forth, the Company has granted, bargained, sold, warranted, released, conveyed, confirmed, assigned, transferred, mortgaged and set over, and by these presents does grant, bargain, sell, warrant, release, convey, confirm, assign, transfer, mortgage and set over unto the Trustee, its successors and assigns forever, all the following described property (hereinafter sometimes collectively termed the 'mortgaged property')."

In case of collateral trust bonds, the granting or pledge clause may read somewhat as follows:

Now, therefore, the Company, in consideration of the premises and of one dollar paid to it by the Trustee, the receipt whereof is hereby acknowledged, and in order to secure due and punctual payment of said bonds and of the interest thereon, does hereby sell, assign, transfer and pledge to, and agree forthwith to deposit

with, the party of the second part, Trustee as herein provided, and its successors in the Trust.

17. Trust Reservation

Following the description of the property transferred or pledged is the trust reservation clause, which provides that the security must be for the equal protection of all bondholders. See page 587 for trust reservation of the Marion Steam Shovel Company and page 635 for that of the Electrical Securities Corporation.

18. Reconveyance Clause

The purpose of the reconveyance clause is to provide that if the company fulfills all its obligations under the trust deed, such as payment of principal and interest as they fall due, the indenture shall "cease, terminate and be void" and the trustee shall take such steps as are necessary to discharge the lien created by the indenture and to reconvey title to the real property to the company. In case of personal property he must deliver proper instruments of assignment and transfer thereof and redeliver any cash in his possession.

The collateral trust indenture of the Electrical Securities Corporation provides that when the company has satisfied all requirements, "the right to the possession of the Collateral Securities then remaining unsold in the possession of the Trustee, including any moneys held as part of the security, shall revert to and vest in the Company, its successors and assigns, and in such event the Trustee agrees to redeliver all of the said Collateral Securities to the Company." (Art. 20).

19. Form, Execution, Exchange and Issue of Bonds

This clause of the indenture provides in what denominations bonds shall be issued, whether registerable as to principal only, or as to both principal and interest. It states how the bonds shall be numbered, as M-1 and upwards for bonds in denomination of $1,000, D-1 and upwards for bonds in denomination of $500, and C-1 and upwards for

bonds in denomination of $100. The designation by which the bonds shall be known is stated, as "First Lien and General Mortgage Gold Bonds, Series of 4½s." The date of the bonds and their due date, as well as the rate of interest they bear and the dates of payment of such interest are stated.

Provision is made for the required signature, counter signature, and impression of the corporate seal; also for authentication of such bonds by the trustee. Provision is also made for a facsimile signature of the proper officer for the bond coupons.

As to registration of bonds, it is frequently provided in the indentures that a register of bonds be kept at the principal office of the trustee, and that any holder of a bond may have it registered in his name. Discharge from registry is provided for.

Provision is made for transfers from bonds of one denomination to those of another denomination.

Provision is made for issuance of temporary bonds exchangeable for definitive bonds as soon as the latter can be prepared.

The aggregate principal amount of bonds which may be authenticated and issued is stated.

Provision is made for issuance of new bonds in exchange for those which have become mutilated, destroyed or lost. Satisfactory evidence and indemnity may be required in case of bonds lost or stolen.

20. Particular Covenants of the Company

Among the things which the company may covenant to do in the trust deed are following:

1. To pay promptly all sums falling due as interest or principal. Provision is made for cancellation of paid coupons.
2. To warrant and defend title to property mortgaged.
3. To pay all taxes, water rates, assessments and governmental and other lawfully imposed liens on the property mortgaged.
4. Not to suffer the property to become encumbered with me-

chanic's, laborer's, statutory or other lien prior to the lien established by the indenture.

5. To keep the mortgaged property in good repair and adequately insured.
6. To have the indenture properly recorded in such places as may be necessary to protect the security of the bondholders.
7. To make reimbursement to bondholders for certain taxes paid in specified states, upon written request from the bondholders.
8. To maintain an office in the Borough of Manhattan, New York, where notices and demands on the company may be presented; also to maintain a paying agent at whose office all sums on account of interest and principal shall be payable.
9. To keep adequate books of record and account and to have satisfactory audits made thereof, and to file in reasonable detail at specified times reports of its financial conditions with a specified agent.
10. To protect its working capital by refusing to pay dividends which would deplete it beyond a certain point.

21. Sinking Fund Provisions

Sinking fund provisions of one kind or another are a common accompaniment of modern bond issues. In accordance with such provisions the issuing company agrees to set aside sums of money for the redemption of bonds on or before their date of maturity. Such provisions differ widely as to detail. In some instances the amount payable periodically into the sinking fund is a fixed sum; in others it is made dependent on earnings, or perhaps on the amount of depletion of wasting assets. See sinking fund provision in indenture of the Marion Steam Shovel Company, pages 598-600.

22. Redemption of Bonds

Various provisions are found relative to the redemption of bonds. It is now frequently arranged by the issuing company to redeem bonds before maturity by paying a premium over and above the par value of the bonds. An illustration is found in the First Mortgage 6% Sinking Fund Gold Bonds of the Fifth Avenue & 29th St. Corporation, dated February 1, 1928, due February 1, 1948. The announcement of the

issue states that these bonds are redeemable in whole or in part on 30 days' notice on any interest date at 104 and interest up to and including February 1, 1935; thereafter at 103 and interest up to and including February 1, 1938; thereafter at 102 and interest up to and including February 1, 1941; thereafter at 101 and interest up to and including February 1, 1944; and thereafter at 100 and interest. These bonds were offered at 99. For provisions relative to redemption fund in the indenture for the First Mortgage 6% Twenty-year Sinking Fund Gold Bonds of the Marion Steam Shovel Company, dated April 1, 1927, and due April 1, 1947, see page 600. For similar provision in indenture of Electrical Securities Corporation, see page 640.

23. Release of Property from Indenture Lien

In case of mortgage bonds the indenture provides that the company shall retain possession and use of the mortgaged property. It is also important that the company be permitted to sell such portions of the property as may from time to time be profitably disposed of. Provision is usually made in the trust deed to the effect that the trustee shall release such property from the lien upon delivery to him of the written request of the company accompanied by the proper authority therefor and data setting forth the description of the property, and showing that it will be profitable to the company to dispose of it at the price indicated, together with other relevant information.

In case of collateral trust deeds provision is made for the withdrawal of securities so long as doing so does not reduce the market value of all securities deposited below a specified minimum amount.

For provision in the first mortgage indenture of the Marion Steam Shovel Company covering release of property from the mortgage lien, see page 602.

For provision in the collateral trust indenture of the Electrical Securities Corporation covering withdrawal of securities, see page 642.

24. Supplemental Indentures

Section 34 of the trust deed of the Marion Steam Shovel Company provides that supplemental indentures may be entered into at any time between company and trustee to correct the description of property mortgaged or to be mortgaged, to add to the company's covenants and agreements relative to bondholders and the mortgaged property, to evidence succession of another company to the property, or for other purposes not inconsistent with the terms of the trust deed, such as remedying ambiguities therein. See pages 606-607.

25. Remedies on Default

The indenture usually provides that if the company fails to meet interest payments on bonds or fails to comply otherwise substantially with the provisions of the indenture, failure to remedy the defect continuing for a specified period, all outstanding bonds together with all interest accrued thereon shall become immediately due and payable. Sometimes it is provided that the trustee shall declare the outstanding bonds together with all accrued interest thereon due and payable after default has occurred, only if a certain percentage of bondholders requests it in writing.

Then follows a lengthy provision of the indenture stating what steps shall be taken by the trustee to protect the interest of the bondholders. In case of collateral trust indentures the trustee is empowered to sell the securities deposited, usually at public auction or private sale, employing the proceeds to defray the expenses of the sale and the balance remaining to the payment of the bonds and interest accrued thereon. For provisions of indenture of Electrical Securities Corporation see page 643. In case of mortgage indentures it is provided that the trustee shall take possession of the mortgaged property, conduct the business of the company for the benefit of the bondholders, and if necessary, sell the property mortgaged under prescribed conditions. For details prescribed

in the indenture of the Marion Steam Shovel Company, see pages 607 to 617.

26. Waiver of Individual Liability

The indenture contains a provision to the effect that all bondholders assent that no recourse may be had thereunder to incorporators, officers, or stockholders of the issuing company individually. See page 617; also page 643.

27. Evidence of Bond Ownership and Rights Thereunder

When bondholders wish to make requests or demands in accordance with the provisions of the indenture they must follow the procedure prescribed by the indenture. For such provision see pages 617-618.

28. The Trustee

The indenture contains detailed provisions relative to the powers, duties, and exemptions from liability of the trustee. For illustrations see pages 618 to 623, and pages 646 to 648.

The following memorandum, including Forms 257 to 261, was prepared for this manual by the First Trust and Savings Bank of Chicago. It explains in some detail the work of the trustees.

MEMORANDUM

Bonds and notes of corporations intended for sale to the public are almost invariably in present practice issued under trust deeds or indentures in which the trustee named is a bank or trust company in the business of acting under such trusts.

Each of the bonds or notes issued under the trust deed or indenture is identified by a certificate signed by the trustee which recites that it is one of the obligations referred to in the indenture or trust deed mentioned in the bond. The only significance which the trustee's certificate is intended to or should be construed to have, is that it is an identification.

As a preliminary to such certification of bonds by the trustee, it requires certain evidence of the validity of the indenture or trust deed and of the bonds. The requirements in the way of such

evidence are fairly standard among trust companies. They usually require certified copies of the articles of incorporation, the by-laws, of the resolutions of stockholders and directors by which the execution of the indenture or trust deed and the bonds or notes was authorized, and an opinion of a reliable concern that the corporation is properly organized and that all requirements of law and corporate procedure have been complied with to make the bonds a valid obligation to the corporation and the trust deed a binding and legal contract.

In cases where the bonds are secured by mortgage on real estate the trustee requires that the opinion also show that the company has good title to the real estate described in the trust deed and that the trust deed creates the lien which it purports to create.

When the corporation is ready to certify and deliver bonds the trustee receives the order of the company to do so uniformly required by the indenture or trust deed, and then makes a detailed record of the bonds or notes certified by it and delivered. In cases where bonds are listed on stock exchanges the trustee is usually required to agree that it will not certify bonds beyond a specified amount without consent of the exchange.

The trustee likewise keeps a record of all bonds paid or canceled without payment, so that when the issue has all been paid off it will have the information necessary to justify its giving a release of the indenture or trust deed and a reconveyance of the property covered thereby, if any. It sometimes happens that notes or bonds are paid elsewhere than at the office of the trustee, that the trustee is not informed of the fact that the payment has been made, and that coupons or obligations paid are lost before the trustee has had any opportunity to see them and make its record, in which case inconvenience and frequently expense is caused to the corporation before it can get a release.

In order to prevent the accumulation of obligations which have been discharged by payment and cancellation it is common practice to cremate them, in which case a detailed record of cremation is made. This should not be done until after the trustee has seen the obligations discharged so that it has the record referred to above. It is also advisable to consult with counsel before cremating any notes or bonds to be sure that they will not have to be presented to some recorder of deeds to procure the recording of a release. Missouri, for instance, has a statutory requirement on this subject.

It is becoming increasingly frequent for corporations to make their notes and bonds payable in more than one city, usually New York and Chicago, for the convenience of the buyers of such

securities. When this is done the banks which are named as paying agents make arrangements for the payment of the obligations without the corporation being required to deposit money at more than one of the banks. The obligations when paid are usually forwarded to the trustee so that it can make a record.

In large issues it is commonly provided that bonds bearing coupons may be registered as to principal on books of the trustee or some other agent or agents of the company and that in the larger issues in addition bonds may be issued in registered form both as to principal and interest. In the first case the interest continues to be payable upon presentation of the coupons, but the principal will only be paid to the person whose name is endorsed on the bond as the registered holder in the form provided for that purpose. In fully registered bonds the name of the registered holder appears on the face of the bond and payment of the interest is ordinarily made to him by check. In either case the registrar, whether trustee or otherwise, keeps a detailed record of all registrations.

Interest payments on bonds come within the class of payments with respect to which the maker of the payments is required by the United States Revenue laws to return information to the government. There are several forms of ownership certificates so called, which the paying agent of the corporation is required to obtain before making payments, and other forms of reports which the paying agent makes to the government with respect to the payments of interest made on behalf of the corporation. In some cases the corporation makes its own returns, but that practice is rather infrequent.

In cases of registered bonds it not infrequently happens that the owner dies while the bond is still registered in his name and thereafter transfers are subject to the problems that arise in cases of dealing with property that belongs to the estate of a deceased person, and the registrar must take precautions for the protection of the corporation with respect to any transfers made, not unlike those involved where a trust company is transfer agent of stock of a corporation.

Other common provisions of indentures and trust deeds that require the activities of the corporate trustee and the keeping of detailed records are sinking fund provisions, provisions for the conversion of bonds into stock, the insurance provisions, provisions permitting the company to redeem bonds in advance of their maturity, and provisions requiring periodic reports of the condition of the company.

The modern trust deed or indenture is a voluminous and very

inclusive instrument. It is not uncommon for a corporation to find that the provisions of such an instrument are troublesome in the operation of the company's business. This is usually due to the fact that a corporation has not given full and careful consideration to the terms of the instrument in advance, but has rather assumed the provisions to be more or less technical matter put in for legal reasons.

Every corporation should make it a practice to analyze very carefully every provision of its proposed indenture or trust deed with a view to ascertaining that no unnecessary embarrassment or difficulty will be incurred by it in the conduct of its ordinary current obligations.

Form 257

Trustee's Memorandum

MEMORANDUM

NAME _____ TRUST NO. _____

RECEIVED _____

NOTES
BONDS NOS. _____ CERTIFIED BY _____

DELIVERED TO _____ FACE VALUE $ _____

ENTERED TRUST RECORD "C" _____ ENTERED FEE LEDGER _____

DATED _____

Form 258

Record of Cancellation

TRUST RECORD "C"

Name _____ Trust No. _____

Manner of Cancellation
- Maturity _____ Amount $ _____
- By Call _____ Amount $ _____
- Without Payment _____ Amount $ _____

Bonds or Note Numbers _____

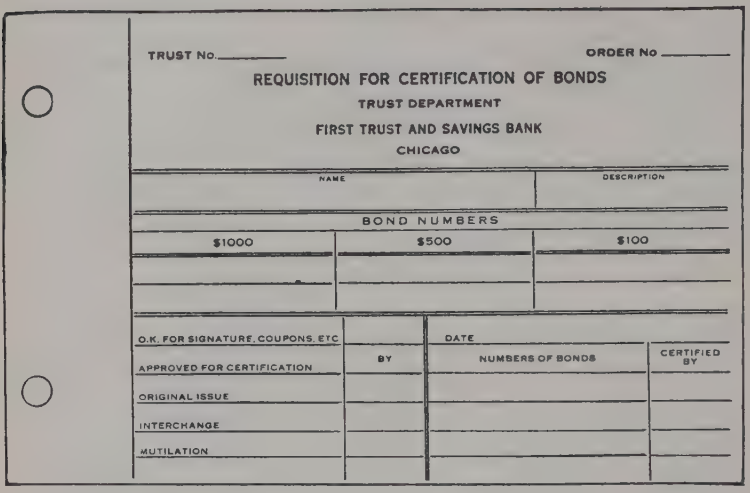
_____

Last Numbers Cancelled _____

Date _____

Form 259

Requisition for Certification of Bonds



TRUST No. _____ ORDER No. _____

REQUISITION FOR CERTIFICATION OF BONDS

TRUST DEPARTMENT

FIRST TRUST AND SAVINGS BANK

CHICAGO

NAME	DESCRIPTION

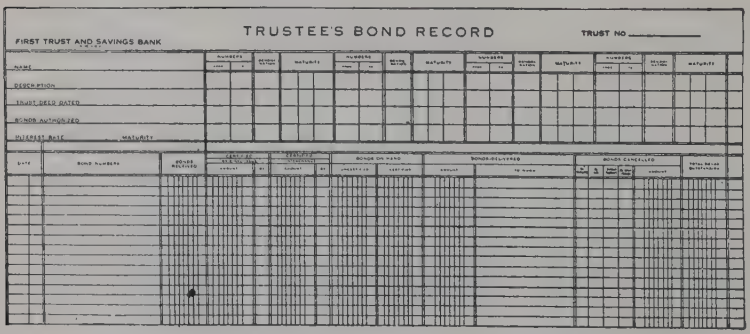
BOND NUMBERS

$1000	$500	$100

O.K. FOR SIGNATURE, COUPONS, ETC		DATE		
APPROVED FOR CERTIFICATION	BY	NUMBERS OF BONDS		CERTIFIED BY
ORIGINAL ISSUE				
INTERCHANGE				
MUTILATION				

Form 260

Trustee's Bond Record



FIRST TRUST AND SAVINGS BANK

TRUSTEE'S BOND RECORD

TRUST NO. _____

NAME

DESCRIPTION

TRUST DEED DATED

BONDS AUTHORIZED

INTEREST RATE MATURITY

NUMBERS

MATURITY

DATE	BOND NUMBERS	BONDS RECEIVED	CASH OR SECURITIES ON HAND	BONDS ON HAND	BONDS DELIVERED	BONDS CANCELLED	TOTAL BONDS OUTSTANDING

Form 261

Trustee's Record of Examination

Trust No.....

Name of Company:

.....

DESCRIPTION

.....

Dated.....

Compared with Trust Deed by.....

Examined for Numbers, Signatures, Maturities and Seal, Coupons, Guarantees, etc.

Nos..... to..... by.....	Nos..... to..... by.....
Nos..... to..... by.....	Nos..... to..... by.....
Nos..... to..... by.....	Nos..... to..... by.....
Nos..... to..... by.....	Nos..... to..... by.....

Examined for Certification and for Coupons Attached to Bonds after Certification

Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....
Bonds Nos..... to..... with Coupons Nos..... to..... attached, by.....

Issue handled by.....

29. Duties of Fiscal Agent

The fiscal agent is usually the same bank or trust company which serves as trustee, but acts as such under a separate appointment. The fiscal agent is primarily a disbursing agent in connection with the payment of interest and principal on bonds. At the proper time funds are deposited with the fiscal agent, and from this point the debtor corporation is relieved of further responsibility relative to details of the procedure. Periodically the fiscal agent returns the cancelled bonds and coupons to the company and also verifies the balance remaining in the bond or coupon account. The desirability of appointing a fiscal agent depends largely on the amount of detail involved. The following memorandum relative to the duties of the fiscal agent was prepared for this manual by the First Trust and Savings Bank of Chicago.

MEMORANDUM

There is a growing practice and it has become increasingly frequent to appoint a Chicago paying agent for bonds issued in New York to accommodate the western investors and obviate the necessity of having coupons forwarded to New York or other cities for payment. Arrangements are usually made with the Chicago paying agent for the deposit of funds to make these payments, through the trustee or principal paying agent, or in some instances by the debtor corporation itself.

Cancelled bonds and coupons are usually returned to the Company by the paying agent once each month or oftener, from whom a receipt and verification of the balance in the bond or coupon account is obtained. The debtor corporation usually keeps the coupons for each interest period filed in numerical order by pasting in a large book, or otherwise. These records require a considerable amount of vault space, especially where the bond issue is of a large amount, and for that reason a great many corporations either request the trustee to retain the cancelled obligations after payment has been made or after having reconciled the paying agent's statement, return the cancelled bonds and coupons to the trustee for sorting, listing, and cremation. Before the bonds or coupons are cremated the numbers are accurately transcribed on a cremation certificate and the actual cremation witnessed by a representative of the Company and the trustee, whose signatures

appear on the cremation certificate, properly witnessed, and the certificate is usually accepted as satisfactory evidence by the trustee when preparing the final release or satisfaction of the mortgage or indenture securing the bonds.

Under the treasury regulations, in the case of tax-free issues, the debtor corporation is obliged to file the ownership certificates accompanying the coupons, with the Government, on monthly and annual forms supplied for that purpose, and if the debtor corporation wishes to appoint a bank (usually the trustee) as withholding agent, a copy of the appointment, properly executed under seal, must be filed with the Commissioner of Internal Revenue at Washington, D. C. With very few exceptions the corporation usually appoints the trustee or principal paying agent to act as its withholding agent.

It is the usual practice to make provision under the terms of the trust deed for the issuance of duplicate bonds in lieu of bonds which have been lost, destroyed, or mutilated. The usual procedure in instances of this kind is to require the filing of a stop payment order signed by the bondholder at the time the bonds or coupons have been lost or destroyed, and after a period of six months has elapsed and it is found that the bonds or coupons in question have not been paid and it seems reasonably sure that they will not be presented for payment, upon the filing of an affidavit and bond of indemnity executed by the purported owner of the bond and a reliable surety company, which papers are submitted to the debtor corporation for approval, and if found satisfactory, upon direction of the debtor corporation to the trustee, arrangements are made for the issuance of a new bond, or in case a coupon or coupons only have been lost or destroyed, for the payment of interest coupons without the actual production and surrender of the same.

Attached herewith are copies of our form of cremation certificate (Form 262), fiscal agent's or withholding agent's appointment (Form 263), stop payment order (Form 264), affidavit (Form 265), bond of indemnity (Form 266), and direction covering payment of bonds or coupons without the actual production and surrender of same (Form 267).

FORM 262

CREMATION CERTIFICATE

First Trust and Savings Bank

TRUST DEPT.
T. D. No. _____

Cremation Certificate

This is to certify, that we, the undersigned, have this day in the presence of each other, **DESTROYED** the following described Securities **by burning the same to ashes.**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

for First Trust and Savings Bank

DATED CHICAGO, ILL., _____

_____

Witness to all signatures.

Form 263

Notice of Fiscal Agent's Appointment

NOTICE OF FISCAL AGENT'S APPOINTMENT

To any Collector of Internal Revenue
and to the bank named herein:

Know all men by these presents, *that the undersigned a_____ of the state of_____ and having its principal office at_____ in the state of_____ has appointed and does hereby appoint _____ Chicago, Illinois, to be the fiscal agent of the undersigned for the purpose and with the power of paying at the office of such fiscal agent the interest upon the _____ bonds of the undersigned dated_____ 19__ as such interest from time to time matures and to act for the undersigned in all matters pertaining to the withholding of the normal tax of two per cent imposed by the Federal Income Tax Law on the interest on said bonds, and notice of such appointment is hereby given.*

Dated_____ 19__

_____

*By*_____
President

Attest:

_____
Secretary

NOTE:—This instrument should be signed in the full name of the corporation or other organization by its president or vice-president, and the corporate seal should be affixed and attested by its secretary or assistant secretary.

Form 264

Stop Payment Order

*Trust No.*_____

_____ *192*_

*To*_____ *Bank, Chicago,*

*Paying Agent for bonds and coupons of*_____

_____

*Description of issue*_____

The undersigned hereby certifies that the following described coupons detached from said bonds of the following numbers are the property of the undersigned and have been lost, mislaid, destroyed or stolen and have not been sold, assigned, transferred or hypothecated in any manner whatever.

Bond Number	*Interest Period*	*Amount*	*Maturity*

If said coupons are presented for payment, please refuse to make such payment and advise the undersigned.

The undersigned hereby agrees to indemnify you against all liability, cost, damage or expense, including counsel fees, which you may incur by reason of so refusing to make such payment or by reason of any action which you may take with respect thereto, upon the understanding that, while you will use reasonable efforts to comply with the above request, you assume no liability in regard to the payment of said coupons if the same shall be presented.

The undersigned further agrees to notify you immediately in case the said coupons are recovered.

_____

_____
Address

_____
Witness

_____
Address

Form 265

Affidavit

F T 228

STATE OF _____ }
COUNTY OF _____ } ss

_____

being first duly sworn, on oath deposes and says:

1. That _____

_____

_____

the owner of _____ certain interest coupon__ of the denomination of _____

_____ dollars (_____) _____

which said coupon _____ detached from _____

_____

of _____

numbered _____ and due _____ 19__, said coupon__ being numbered _____ and being for the payment of the interest due on said _____ on _____ 19__; that on or about _____ 19__, _____

_____

_____

_____

_____

_____

that _____ has made diligent search but is unable to find or produce said coupon__; that _____ has not sold, assigned, transferred or hypothecated said coupon__ or any interest therein in any manner whatsoever, and has received no payment on account of said coupon__ and that the same _____ wholly unpaid.

2. That he makes this affidavit for the purpose of inducing said _____ and said _____ Bank to pay the amount of said coupon__ without the actual production and surrender of the same.

_____

Subscribed and sworn before me, a _____ duly qualified and have authority to administer oaths, this _____ day of _____, 19__

_____

_____

My commission expires _____ 19__

FORM 266

BOND OF INDEMNITY

_____

_____ 19___

_____ Bank,

Chicago, Illinois

Gentlemen:-

As agent for the payment of the coupons of the undersigned, issued and outstanding under the terms of the _____ of the undersigned to the FIRST TRUST AND SAVINGS BANK _____ as Trustee__, dated _____ 19___, you are hereby ordered and directed to pay to _____ of _____, or _____ order, the sum of $_____, being the amount due _____ as the owner of interest coupon__ r this amount maturing _____ 19___ and detached from _____ No _____, which coupon _____ claims _____ been lost, mislaid or destroyed and cannot be produced, said payment to be made without the production of said coupon.., qut of the funds deposited with you for the payment of such coupons.

The surety bond dated _____ 19,___ executed by said _____ _____ as principal and _____ as surety, sent us in your letter dated _____ 19___ is hereby approved.

The undersigned hereby agrees to indemnify and save you harmless against any loss, damage, costs or expenses which you may sustain either directly or indirectly on account of the payment of such coupon without the production and surrender thereof.

Very truly yours,

_____

By _____

Its _____

Form 267
Directing Payment Without Production of Bonds or Coupons

Know all men by these presents, That the undersigned_____

_____

_____

_____

as principal (hereinafter generally called "principal"), and_____

_____

a_____corporation, as surety, (both hereinafter generally called "obligors") are held and firmly bound unto_____

_____, a_____corporation, _____

_____, the First Trust and Savings Bank, an Illinois corporation, having its office in Chicago, and_____

_____, their successors and assigns (hereinafter generally called "obligees") in the sum of_____

_____ dollars ($_____), lawful money of the United States of America, for the payment of which well and truly to be made they hereby bind themselves, _____

their _____successors.

Signed and sealed in duplicate and dated this_____

day of_____, 19___.

The condition of this obligation is such, that **whereas,** said_____

_____

did issue its_____

_____ due_____, 19___, numbered_____

_____in the principal sum of

_____dollars ($_____) _____

with interest coupons attached thereto, said_____and coupons being issued under

_____ said First Trust and Savings Bank

_____as trustee

dated_____, 19___ and being payable at said_____

____ _____, and

FORM 267 *(Continued)*

DIRECTING PAYMENT WITHOUT PRODUCTION OF BONDS OR COUPONS

Whereas, the principal is the owner of the interest coupon__ maturing_____, 19__, detached from said_____ and numbered_____ for the sum of_____ dollars ($_____) _____, and said interest coupon_____ been_____ and the principal is unable to produce the same, and has requested said_____ to pay_____ the amount of said interest coupon__ in consideration of the execution and delivery of this bond of indemnity and said last named obligees have agreed to pay to the principal or to _____ order said amount of this coupon__.

Now, if the undersigned obligors shall save and hold harmless the obligees from any and all claims, loss, costs or damages whatsoever by reason of the premises, or said coupon__, or by reason of the payment of the amount of said coupon__ without_____ actual production and surrender, or by reason of the release of said_____ by authority of which said_____ and coupon__ were issued, without the production and cancellation of said coupon__, then this obligation shall be null and void, otherwise the same shall remain in full force and effect.

In Witness Whereof, the said obligors have signed and sealed this instrument.

_____ (SEAL)

_____

By_____

Its_____

ATTEST:

_____

Its_____

30. Bonds Classified and Described

For purposes of classification the description of bonds in the following pages follows the outline shown below:

A. As to Security
- Mortgage Bonds
  - Prior Lien Bonds
  - First Mortgage Bonds
  - Second Mortgage Bonds, etc.
- Collateral Trust Bonds
- Unsecured Bonds
- Equipment Bonds
- Guaranteed Bonds
- Divisional Bonds
- Special Lien Bonds
- Receiver's Certificates

B. As to Maturity
- Long-Term Bonds
- Short-Term Bonds
- Notes
- Callable Bonds
- Serial Bonds
- Sinking Fund Bonds

C. As to Transferability and Negotiability
- Registered Bonds
  - As to principal
  - As to interest
- Bearer Bonds
- Coupon Bonds

D. As to Whether Open or Closed
- Closed End Mortgages
- Limited Open End Mortgages
- Unlimited Open End Mortgages

E. As to Yield
- Fixed Interest Bonds
- Income Bonds
- Adjustment Bonds

F. As to Special Privileges
- Convertible Bonds
- Participating Bonds
- Bonds with Stock Warrants

A. As to Security

31. Mortgage and Prior Lien Bonds

Mortgage bonds may be first, second, third and so on. A first mortgage bond has a first lien on the property mortgaged for its protection and in case of default in interest or principal the property must be used to satisfy the requirements before it can be used for satisfaction of requirements on second mortgage bonds, and so on. It is the trustee's duty to enforce the provisions of the mortgage in this respect. Some illustrations of first mortgage bonds follow:

The San Antonio Public Service Company has outstanding $7,500,000 of First Mortgage and Refunding Gold Bonds, Thirty-year 5%, Series B, dated January 1, 1928, due January 1, 1958. Bonds of this series have been authenticated to the amount of $9,000,000, $1,500,000 being retained in the company's treasury. The bonds are issued under an indenture to the Bankers Trust Company, dated January 1, 1922, and supplemental indentures dated January 1, 1928. The mortgage securing these bonds as well as $5,550,000 Series A 6% Bonds due January 1, 1952, previously issued is a direct first lien on all the company's properties, subject only to $1,968,000 prior lien bonds issued under closed mortgages on a portion of the company's properties. The mortgage also covers properties hereafter acquired, subject to prior lien bonds, if any.

The above shows how there may sometimes be outstanding two first mortgage bond issues secured on the same property. In reality, the issue of first mortgage bonds made subsequently to the issuance of the prior lien bonds is a second mortgage issue in so far as the property already mortgaged is concerned and a first mortgage issue as to the remaining and hitherto unmortgaged property.

The First Mortgage 6% Twenty-year Sinking Fund Gold Bonds of the Marion Steam Shovel Company are fully described in the indenture reproduced herein beginning at page 588.

The First Mortgage and Refunding Gold Bonds of the Interstate Public Service Company, in the opinion of counsel, are a direct obligation of the company, and are secured by a mortgage covering as a direct lien all fixed property now owned or hereafter acquired. The mortgage is a first mortgage on properties valued by examining engineers, plus subsequent additions, at an amount largely in excess of the First Mortgage and Refunding Gold Bonds outstanding, namely, $25,215,700. The mortgage is also a direct lien on the balance of the company's property, subject to $1,817,000 outstanding closed prior liens of which $27,000 principal amount will be deposited under the mortgage and $15,100 are now held by the company. The 999-year lease of the Indianapolis, Columbus and Southern Traction Company is also pledged under the mortgage. Under the terms of this lease, as part of the rental, the company pays the interest on the leased company's closed issue of $973,000 Twenty-five Year First Mortgage 6% Gold Bonds due February 1, 1948.

Most corporations dislike to call second mortgage bonds by their true name; hence so-called first mortgages are sometimes found to be such as to a relatively small amount of property and second mortgages as to a comparatively large amount of property.

32. Collateral Trust Bonds

Collateral trust bonds are those secured by the deposit of securities with the trustee to whom the indenture is made out. Collateral trust bonds are the equivalent of first mortgage bonds when the securities thus deposited are first mortgage bonds. In other words, they are as good as the security behind them. This type of bonds has proven a popular means of financing, enabling companies holding in their treasuries a number of types of securities, frequently those issued by subsidiary companies, to hypothecate them and thus place on the market an issue of collateral trust bonds large enough to create a satisfactory market. Bank loans may afford the means of buying up other companies, after

which the securities thus obtained may be deposited as collateral for an issue of bonds the sale of which affords the means of repaying the bank loans. Sometimes, instead of depositing the securities of subsidiaries with a trustee as security for a bond issue a holding company is organized and the stock of the holding company is sold to the public. This enables the management to retain full control of the securities.

The indenture provides that the market value of the securities deposited to secure an issue of collateral trust bonds must not fall below a certain percentage of the par value of the collateral trust bonds. Thus the indenture of the Electrical Securities Corporation provides that the value of securities pledged must not fall below 125% of the aggregate principal amount of bonds outstanding. This affords a margin of safety.

An illustration of collateral trust bonds secured entirely by deposit of stocks are the 5½% Serial Collateral Gold Bonds, Series A, of The Copley Press, Inc., dated Feb. 1, 1928, due serially 1930-1943. These bonds are secured by all of the stock of several newspapers which the Copley Press, Inc., owns and operates. In addition, the payment of principal and interest is unconditionally guaranteed by Ira C. Copley. This issue of $3,200,000 constitutes the sole funded indebtedness of the company and its subsidiaries, and the company covenants that while any of these bonds are outstanding, neither the company nor any subsidiary will mortgage or pledge any of its assets, except that property may be acquired subject to purchase money mortgage or existing indebtedness. The guarantee of Ira C. Copley also includes a provision that the guarantor's will shall provide for the deposit with the trustee of marketable securities equal in value to the then outstanding bonds, which deposit shall be applied, as the securities mature or are sold, to the redemption of bonds of this issue.

An illustration of bonds secured partly by securities and partly by direct first mortgage are the $100,000,000 Consoli-

dated Mortgage 4½% Gold Bonds of the St. Louis–San Francisco Railway Company secured as follows:

(*a*) by deposit of over $66,630,000 underlying Bonds ($47,630,000 St. Louis-San Francisco Railway Company Prior Lien Mortgage Bonds and over $19,000,000 Kansas City, Fort Scott and Memphis Railway Company Refunding Mortgage Bonds);
(*b*) directly, or through pledge of all outstanding securities, on 4,292 miles of road of the St. Louis-San Francisco system proper, together with equipment, terminals, shops, etc.;
(*c*) by substantially all the stock or properties of the Kansas City, Fort Scott and Memphis Railway Company, owning or controlling 1,331 additional miles of road;
(*d*) by all properties hereafter acquired with the proceeds of Consolidated Mortgage Bonds.

These bonds are subject to $162,420,520 underlying bonds in the hands of the public (the amount of which can not be increased), to $17,438,000 equipment trust obligations and to any liens on after-acquired property. The underlying bonds cannot be extended and Consolidated Mortgage Bonds are reserved to refund them.

33. Unsecured Bonds

Unsecured bonds, usually termed debentures, are those which have no security other than the general credit of the company. In England, the term "debenture" is employed in a broader sense, viz., that in which the term "bonds" is used in the United States. In case of debentures an indenture is made out to a trustee, but its purpose is to recite certain rules or standards with which the company is supposed to comply in operating its business, not to name any particular form of security. Being unsecured promises to pay, debentures rank with other unsecured debts of the issuing company.

Illustrations of debenture bonds are the $2,300,000 6½% gold debentures of the Walworth Company, which are preceded by $8,349,500 first mortgage 6% sinking fund gold bonds. Following the debentures are $1,000,000 preferred stock and 300,000 non par shares of common stock represented on the balance sheet, as at December 31, 1927, by a

capital and surplus item of $14,468,396, a moderate reduction from $15,019,216 as at December 31, 1926, this reduction resulting from payment of dividends in excess of earnings and to certain extraneous charges made direct to surplus. In 1927, after depreciation was deducted, interest requirements on the first mortgage bonds were more than twice covered, and about three times covered, disregarding depreciation. Dividends on the common stock are currently being paid at the rate of $1.20 a share, but unless earnings improve this rate is liable to be reduced. This gives some idea of the position of the debentures.

Other debenture bonds are the Pittsburgh Steel Company 6% Debentures due 1948; the Independent Oil and Gas Company Convertible 6% Debentures due 1947; the American Solvents and Chemical Corporation 6½% Debentures due 1936; the American Rolling Mills Company 5% Sinking Fund Debentures due 1948; the International Match Corporation 5% Sinking Fund Debentures due 1947; and the American Cyanamid Company 5% Sinking Fund Debentures due 1942.

Not infrequently some convertible privilege is attached to debentures to render them attractive from a speculative point of view, which in turn aids in selling them. An illustration is the $3,000,000 Fifteen-year Convertible Sinking Fund 6½% Gold Debentures of the Troy Laundry Company, Inc., dated January 1, 1928, due January 1, 1943, the principal and interest of which are unconditionally guaranteed by endorsement by the Manhattan Electrical Supply Company, Inc. These debentures are convertible into the non par value stock of the Manhattan Electrical Supply Company, Inc., at $80 per share up to and including December 31, 1932; at $90 per share thereafter up to and including December 31, 1937; and at $100 per share up to and including December 31, 1942. They are the direct obligation of the company and constitute its only funded debt. The guaranteeing company has no funded debt, and these debentures constitute the only funded debt of its

subsidiaries. The indenture provides that while any of these debentures are outstanding:

(1) The company shall not mortgage any of its properties or create any funded debt ranking equal with or prior to these debentures except purchase money mortgages;
(2) The company shall maintain at all times net current assets not less than 75% of the principal amount of the outstanding debentures;
(3) The company may not declare any dividends on its common stocks which would cause its current assets to fall below 100% of the principal amount of then outstanding debentures.

The indenture also provides for a fixed sinking fund of $150,000 annually, payable semi-annually beginning July 1, 1928, to retire the debentures, it being calculated that this will retire at least 70% of the issue before maturity. The debentures are redeemable in whole or in part at the option of the company on the first day of any month upon thirty days published notice at 105 and accrued interest up to and including January 1, 1933, the redemption price thereafter decreasing ½ of 1% during each subsequent twelve months. These debentures were offered at 100 and accrued interest.

34. Equipment Trust Certificates and Equipment Bonds

Equipment bonds and equipment trust certificates originated in connection with railroad financing, but in recent years their use has been extended to other industries having available large quantities of equipment of one sort or another. Many mortgages have an after-acquired clause which provides that property purchased after date of the mortgage shall be subject to its lien. The Philadelphia plan of equipment trust obligations has been extensively employed to avoid this lien. Thus if a railroad company needs rolling stock, under the Philadelphia plan the trustee leases the railroad the rolling stock upon consideration of a reasonable down payment and the balance in equipment trust notes, secured by the equipment and lease. The trustee then sells the notes to the public. Such notes commonly run ten years. With money secured by sale of the notes and the down pay-

ment from the company the trustee pays the manufacturer. When the company has finished making payments under the lease or conditional sale, title to the rolling stock is transferred to it. Should the company default on its payment the trustee will lease the rolling stock to another company, a procedure rendered easy by the movable character of the property. Experience has shown such securities to be an unusually sound investment, defaults being practically unknown.

Under the New York plan the company acquires possession by conditional sale, title being reserved either by the trustee or the owner of the equipment until all required instalments and interest have been paid.

There is confusion of terminology regarding equipment obligations, but in general it may be said that the distinguishing characteristic of the Philadelphia plan is the lease, that of the New York plan the conditional sale, while that of a third plan is a note issued directly by the company operating the equipment. These notes are secured by a chattel mortgage on the equipment.

The term "certificate" should be applied to notes issued under the Philadelphia plan; the term "bond" to direct obligations of operating company secured by chattel mortgage.

In general, securities issued under the Philadelphia plan possess a stronger lien than those issued under the equipment bond plan.

An illustration of equipment trust certificates issued under the Philadelphia plan are the $1,200,000 of 4½% Equipment Trust Certificates, Series B, dated March 1, 1928, maturing in semi-annual instalments of $60,000 each, September 1, 1928, to March 1, 1928, inclusive, unconditionally guaranteed as to principal and dividends by endorsement by the Pressed Steel Car Company. Title remains vested in the Trustee, the New York Trust Company, free and clear of any prior liens for the benefit of the certificate holders. The certificates, limited to the authorized amount of $1,200,000, are issued against the following new equipment:

400 beef type steel refrigerator cars
100 provision type steel refrigerator cars

This equipment cost in excess of $1,500,000, or more than 125% of the principal amount of the certificates to be issued, the balance to be paid in cash. It was leased in the first instance to the Steel Car Equipment Company for a period of ten years at a rental sufficient to provide for the serial maturities and dividends on these certificates and is operated through sub-leases by trunk line railroads and others.

In addition to the specific security, these certificates are unconditionally guaranteed as to prompt payment of principal and dividends by endorsement by the Pressed Steel Car Company, which owns all the capital stock of the Steel Car Equipment Company. These certificates were offered to yield from 4% to 4.8%, according to maturity.

The Chicago & North Western Railway Company has an issue of $2,745,000 4½% Equipment Trust Certificates of 1927, Series "T," dated November 1, 1927, and maturing in equal annual instalments of $183,000 each, November, 1928 to 1942, inclusive. These certificates represent not more than 75% of the total cost of the new equipment on which they are secured. Full title to this equipment is vested in the trustee for benefit of the certificate holders, being leased to the company at a rental sufficient to pay the principal amount of these certificates and interest warrants thereon together with taxes assessed against the equipment, other than income taxes. The maturities and yields are as follows:

Maturities	*To Yield*	*Maturities*	*To Yield*	*Maturities*	*To Yield*
November 1, 1928	4.00%	November 1, 1933	4.20%	November 1, 1938	4.20%
November 1, 1929	4.15%	November 1, 1934	4.20%	November 1, 1939	4.20%
November 1, 1930	4.20%	November 1, 1935	4.20%	November 1, 1940	4.20%
November 1, 1931	4.20%	November 1, 1936	4.20%	November 1, 1941	4.20%
November 1, 1932	4.20%	November 1, 1937	4.20%	November 1, 1942	4.20%

Accrued interest to be added in each case.

35. Guaranteed Bonds

The bonds of one company are said to be guaranteed when another company endorses them, agreeing thereby to pay

principal or interest, or as is usually the case, both principal and interest. The guaranteed bond arrangement is customary between parent company and subsidiary, the parent company's guarantee adding to the marketability of the subsidiary company's bonds and enabling it to secure funds at lower interest rates. Usually the guarantee appears in writing on the bond. The fifteen-year convertible debentures of the Troy Laundry Company, Inc., are an illustration. See page 682.

36. Divisional Bonds

Divisional bonds, thought of chiefly in connection with railroad financing, are underlying first mortgage bonds secured on some one part of a company's property. The bonds of a small company may be regarded as divisional after it has been absorbed by a larger system. Not infrequently such divisional bonds have a lien on property of great strategic value, in which case they represent the highest type of investment security.

37. Special Lien Bonds

Special lien bonds are those having a direct first mortgage on some particular piece of real estate as distinguished from the general assets of the company, the object being to give better security than could otherwise be had. Bonds secured on terminal properties are an illustration.

38. Receivers' Certificates

Receivers' certificates are issued by order of the court which takes general charge of reorganization proceedings. These certificates may precede some of the older mortgage liens, in fact they are given whatever lien may be necessary to afford adequate security. Receivers' certificates are short-term notes and are the obligation of the court rather than of the company, although they are liquidated out of the company's property. In some instances they take precedence over all the mortgages.

An illustration of receivers' certificates are the 4½s of the Central Vermont Railway Company, dated January 16, 1928, due January 16, 1930. By court order dated January 5, 1928, the receivers are authorized to issue these certificates up to the aggregate principal amount of $5,000,000. The order provides that no other certificates ranking prior to or equally with these certificates are to be created while any of these certificates are outstanding, and further provides that these certificates are to be secured by a lien upon cars and equipment (subject also to the rights of holders of car and equipment trust notes, of which notes $699,000 principal amount are now outstanding), upon surplus income as therein defined, and upon the railroads, premises, franchises and other property of Central Vermont Railway Company constituting the receivership estate, such lien ranking prior in each case to the lien of the company's Refunding Mortgage 5% Gold Bonds and to all other liens (other than the rights above specified with respect to cars and equipment), except only the lien of taxes and/or assessments.

Note that these certificates precede all other obligations of the company except equipment trust certificates, taxes and assessments.

B. As to Maturity

39. Long and Short Term Bonds

There is no definite way to tell what maturity date may be regarded as the dividing point between long term and short term bonds. Many bond issues are found running in excess of forty years and it is not exceptional to find them maturing more than 100 years from date of issue. Most bonds running in excess of 50 years are railroad bonds. Industrial bonds run for periods usually less than 50 years in duration.

Short term bonds might be regarded as those running from say 5 to 30 years, but here again there are no standards.

40. Notes

Notes usually mature in five years or less.

41. Callable Bonds

Callable bonds are given a definite maturity date but are callable before that date, usually upon payment of a specified premium over and above their par value. This privilege may not be acted upon; on the other hand, the altered financial condition of the company or of the money market may make it profitable to call bonds before maturity. Most modern issues of bonds are made with the call privilege attached, probably because it is likely to prove advantageous to the company rather than to the investor. The investor does not know when his investment will be disturbed and if the market price goes above the call price the purchaser may suffer a loss if the bonds are called soon after he buys them. The fact that bonds may be called is likely to prevent their appreciating much above the call price. However, the disadvantages are lessened if the call price is placed sufficiently above the issue price to allow of a reasonable amount of appreciation or to give the buyer a reasonable profit on the call if they are called a short time after issuance. The call price usually diminishes, approaching par as the maturity date is reached. Illustrative of this are the First Mortgage and Refunding 4½% Gold Bonds of the Interstate Public Service Company dated March 1, 1928, due March 1, 1958. They are redeemable in whole or in part upon 30 days' published notice at the following prices and accrued interest: to March 1, 1938 at 105; on and from March 1, 1938 to March 1, 1934 at 104; on and from March 1, 1934 to March 1, 1948 at 103; on and from March 1, 1948 to March 1, 1953 at 102; on and from March 1, 1953 to March 1, 1957 at 101, and on March 1, 1957 and thereafter to maturity at 100. These bonds were offered at 94½.

An illustration of a callable privilege which continues for a long period at a given figure, then drops to par, is the

callable provision of the St. Louis-San Francisco Railway Company Consolidated Mortgage 4½% Gold Bonds due March 1, 1978. The company reserves the right to call these bonds for redemption, in whole or in part, upon 60 days' previous notice, on any interest date, at 105% to and including March 1, 1968, and at par thereafter. These bonds were offered March 2, 1928, at 97.

An illustration of notice of call to redeem an entire issue of bonds is shown in Form 268.

FORM 268
REDEMPTION CALL

To the Holders of the
FIRST MORTGAGE 5% GOLD BONDS, SERIES "A", of the WAUSAU TELEPHONE COMPANY of WAUSAU, WISCONSIN:

NOTICE IS HEREBY GIVEN, That the Wausau Telephone Company, a corporation of Wausau, Wisconsin, has elected to pay and redeem and does hereby call for payment and redemption on May 1, 1928, at the Citizens State Bank of Wausau, Wisconsin, the trustee, pursuant to the terms of a certain trust indenture dated November 1, 1924, at the principal and accrued interest to the date of such redemption, plus a premium on said principal amount thereof of five per cent (5%). This covers all of said bonds issued under said trust indenture.

The holders of said bonds are hereby required to present same on May 1, 1928, for payment and redemption at the office of said trustee, at its banking rooms in the City of Wausau, Wisconsin.

From and after May 1, 1928, no interest will be paid on any of said bonds, and the holders of said bonds shall only be entitled to said redemption price for said bonds as herein stated.

Dated at Wausau Wisconsin
February 25, 1928.

WAUSAU TELEPHONE COMPANY,
By A. H. ZIMMERMAN, Secretary.

An illustration of notice to call part of an issue of equipment trust certificates is shown in Form 269. In such cases the bonds are drawn by lot and it is necessary to publish the number of the bonds drawn. Bonds are drawn in this way when purchased out of sinking fund money.

FORM 269

REDEMPTION CALL FOR PART OF ISSUE

TO THE HOLDERS OF MICHIGAN TANK CAR EQUIPMENT TRUST GOLD CERTIFICATES:

You are hereby notified that Michigan Tank Car Company has directed the call and redemption on April 1, 1928, of $40,000,000 aggregate par value Michigan Tank Car Equipment Trust Gold Certificates issued under Equipment Trust Agreement dated April 1, 1923, between Chas. F. Noble Oil & Gas Co., Michigan Tank Car Company and The National Bank of the Republic of Chicago, and said certificates bearing numbers hereinafter set forth will be paid upon presentation at the office of the undersigned on and after April 1, 1928, at par and accrued dividends plus a premium of 2½% of such par value. After said date such certificates will cease to bear interest or to be secured by said agreement.

M-256,	M-257,	M-258,	M-259,	M-280,
M-281,	M-282,	M-283,	M-302,	M-303,
M-304,	M-305,	M-325,	M-326,	M-327,
M-328,	M-248,	M-349,	M-350,	M-351,
M-370,	M-371,	M-372,	M-373,	M-394,
M-395,	M-396,	M-397,	M-416,	M-417,
M-418,	M-419,	M-438,	M-439,	M-440,
M-441,	M-452,	M-453,	M-454,	M-455.

THE NATIONAL BANK OF THE REPUBLIC OF CHICAGO

By W. E. TOON, Trust Officer.

42. Serial Bonds

Serial bonds are those which mature in groups, one group in one year, another group the next year, and so on. By this arrangement the principal of the outstanding bonds is being periodically diminished and the security back of the bonds remaining outstanding increased. Since the interest charges are being reduced as the successive groups mature it is sometimes desirable to make the later maturities larger than the earlier ones, thus making the combined payment of interest and principal a fairly constant charge upon the resources of the company.

An illustration of serial bonds are the 5½% Serial Col-

lateral Gold Bonds of The Copley Press, Inc., dated February 1, 1928, and due serially 1930-1943, as follows:

Amount	*Maturity*	*Yield %*	*Amount*	*Maturity*	*Yield %*
$160,000	February 1, 1930	5.00	$ 160,000	February 1, 1937	5.50
160,000	February 1, 1931	5.25	160,000	February 1, 1938	5.50
160,000	February 1, 1932	5.40	160,000	February 1, 1939	5.50
160,000	February 1, 1933	5.50	160,000	February 1, 1940	5.50
160,000	February 1, 1934	5.50	160,000	February 1, 1941	5.50
160,000	February 1, 1935	5.50	160,000	February 1, 1942	5.50
160,000	February 1, 1936	5.50	1,120,000	February 1, 1943	5.50

The earlier maturities in this issue are priced to yield less than the later ones, a common provision in serial bond indentures. A frequent feature also is the large amount of the final maturity. This usually means that some special arrangement will be necessary to care for this either through accumulation of a sinking fund or some form of re-financing operations. In this instance the indenture provides that 5% of the annual net earnings remaining after payment of interest and federal taxes shall be paid into a sinking fund each year for retirement of bonds of the last maturity then outstanding, by redemption or purchase at not exceeding the redemption price. The indenture provides that all of the bonds are redeemable at the option of the company, as a whole or in part, on any interest date, at 101 and interest on or before February 1, 1933; thereafter at 100½ and interest to and including February 1, 1942, and at par thereafter.

Most of the real estate issues fall due serially.

The serial plan of bond issues may be regarded as a substitute for the sinking fund plan, although, as in the above illustration, sinking funds are sometimes employed in connection with serial bond issues. When the money in the sinking fund is invested by buying up outstanding bonds of the issue in connection with which it is established the sinking fund plan bears close resemblance to the serial plan. In case of serial bonds, however, it is definitely known which bonds will mature and be retired in a given year, whereas this certainty is not inherent in sinking fund bonds. Of course, the callable feature attaching to most serial bonds introduces an element of uncertainty as to the possible re-

tirement of part or all of the issue, but the call privilege may not be exercised, being optional with the company and not likely to be exercised unless some special advantage is found in doing so, whereas the sinking fund arrangement is compulsory, hence certain to be exercised. In such case bonds are drawn by lot, so that none of the holders can be assured as to the continuation of their investment. Their only recompense for having their bonds called at an early date may be found in the premium which the company is required to pay to repurchase the bonds. In some instances bonds are called sufficiently soon after issuance and at a price sufficiently above the price of issuance to give the investor a high rate of return on his temporary investment.

An illustration of notes due serially are the 4½% Serial Gold Notes of the Scranton-Spring Brook Water Service, dated December 15, 1927, maturing serially December 15, 1929 to December 15, 1933.

Serial bonds should not be confused with bonds issued in series. Thus blocks of a total authorized issue of bonds may be issued in successive series. Illustrations are the First and Refunding Mortgage Gold Bonds, Series C, 4½s of the Memphis Power & Light Company, which rank equally with the series A bonds of that company; also the Collateral Trust Sinking Fund 5% Gold Bonds, 20th Series, of the Electrical Securities Corporation.

43. Sinking Fund Bonds

Sinking fund provisions of one kind or another are a feature of many bond issues. Technically, a sinking fund is a sum of money established through periodic payments, the whole being allowed to accumulate at compound interest until date of maturity of the bonds in connection with which it is established, and then employed to redeem them. In practice the sinking fund is usually employed at intervals to buy up outstanding bonds of the issue it is formed to liquidate. The indenture provision is usually to that effect. This is ordinarily a more effective disposition of the fund

than investing it in other securities would be. The provisions of the indenture of the Marion Steam Shovel Company regarding a sinking fund are set forth on pages 598 to 600. In effect, it provides for establishing a sinking fund through semi-annual payments sufficient to retire the entire issue of bonds on or before maturity. The sum paid semi-annually to the trustee is $50,150 plus:

> an amount equal to three per cent (3%) of the aggregate principal amount of (1) all bonds theretofore delivered to the Trustee in payment of any prior sinking fund payment in lieu of cash as hereinafter provided and of (2) all bonds previously redeemed or called for previous redemption by operation of the sinking fund; provided, however, that the sinking fund payment to be made on February 23, 1947, shall be an amount necessary to pay at maturity all bonds then outstanding.

The indenture further provides that the trustee shall, after February 15 and August 15 of each year beginning with August 15, 1927, draw by lot such number of bonds as the next succeeding sinking fund payment plus cash held in the fund will redeem. Publication of notice of redemption is provided for.

Concerning the advisability of using money in the fund to cancel the debt instead of allowing it to accumulate at compound interest, Chamberlain and Edwards, in their *Principles of Bond Investments,* page 91, say:

> . . . From the days of Albert Gallatin there have not been wanting men of sufficient clarity of vision in financial matters to realize the unnecessary complexity and waste in sinking fund accounts and the simplicity and economy of applying a surplusage directly to the cancellation of debt. But it is only in recent times that the same principle has obtained recognition for corporation bonds.

Chamberlain and Edwards, page 92, compare the sinking fund and serial repayment plans as follows:

> With the exception of telephones, perhaps, of all kinds of property commonly bonded, rolling stock depreciates with greatest certainty and rapidity. After fifteen or twenty years there is very little life left in it. Yet equipment bonds are one of our strongest

securities. Most equipment issues, and the best of them, have no sinking funds. Their *principal* safety lies in the fact that the debt is paid off more rapidly than the cars and engines wear out. Here is the best exemplar of reinforced security: Serial Repayment.

But in small companies, and in those subject to the depletion of their material assets, if there is not serial repayment, then, by all means, there should be sinking fund accumulation.

The payments into the sinking fund are made in various ways. A common plan is a fixed annual payment, but there are frequent variations from this. Sometimes the instalments are made to increase in size to offset reduced interest payments resulting from reduction of the principal amount of bonds outstanding. Sometimes the instalments are made to vary with profits, or with gross revenues, or with depletion of natural resources suffered.

The indenture of the Tacony-Palmyra Bridge Company provides that in connection with its $2,500,000 issue of 6% First Mortgage Bonds, dated December 1, 1927, due December 1, 1952, semi-annual sinking fund payments shall be made beginning July 1, 1931, and continuing each year thereafter, it being estimated that these instalments will retire not less than 50% of the entire first mortgage bonds at maturity. Note that instalments are deferred several years in this instance.

The indenture of Spang, Chalfant and Company, Inc., for its authorized issue of $12,000,000 First Mortgage 5% Sinking Fund Gold Bonds dated January 1, 1928, due January 1, 1948, provides for a sinking fund of $375,000 per annum, payable semi-annually, commencing January 1, 1929, to be applied to the retirement of the bonds by purchase at or below the then current redemption price, or, if not so obtainable, by redemption by lot at that price; but the company retains the right to deliver bonds at cost (not exceeding the then current redemption price) in lieu of cash payments to the sinking fund.

The indenture of the Commercial Investment Trust Corporation for its $15,000,000 6% Convertible Debentures, dated March 1, 1928, due March 1, 1948, provides for a

purchase fund of $750,000 per annum, equal instalments to be reserved semi-annually beginning September 1, 1928, to be used to purchase debentures, if obtainable at or below 100% and interest, unexpended balances at end of each six months' period to be used for general corporate purposes.

The indenture of the Pitney-Bowes Postage Meter Company for its $500,000 of Ten-Year 6% Secured Sinking Fund Gold Notes dated December 1, 1927 due December 1, 1937, provides for a minimum sinking fund, operating semi-annually, commencing June 1, 1928, sufficient to retire at least 60% of the notes by maturity. An additional sinking fund is provided, commencing June 1, 1929, of 10% of consolidated net earnings of the previous year, as defined in the indenture.

The indenture of the National Gas & Electric Corporation, for its $3,400,000 of First Mortgage Collateral Gold Bonds, dated February 1, 1928, due February 1, 1953, provides for a sinking and improvement fund, beginning January 1, 1930, equal annually to not less than 1% of the greatest principal amount of bonds of this series at any time outstanding, to be used either to retire bonds or be invested in betterments.

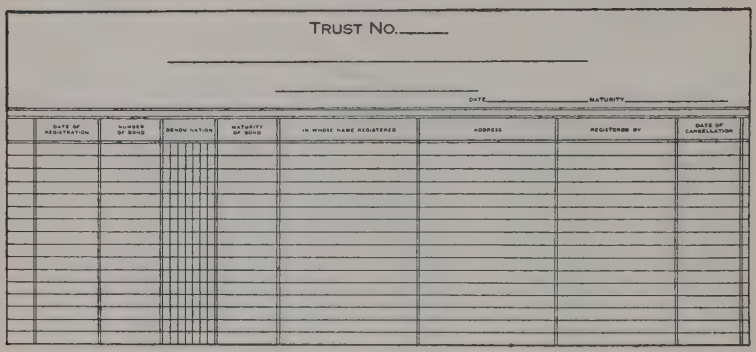
C. As to Transferability and Negotiability

44. Registered Bonds

Bonds may be made registerable as to principal or as to both principal and interest. Provision should be made for this in the indenture. Registration as to principal consists in submitting the bond to the registrar, who makes a record thereof in a form such as is shown in Form 270, and who also enters the owner's name in the space provided therefor on the bond itself, indicating also his own capacity to perform the registration. In case of bonds registered as to both principal and interest, known as fully registered bonds, the old bond is cancelled and a new non-coupon bearing form of bond is issued in its place. The registrar makes entry in the form shown in Form 271.

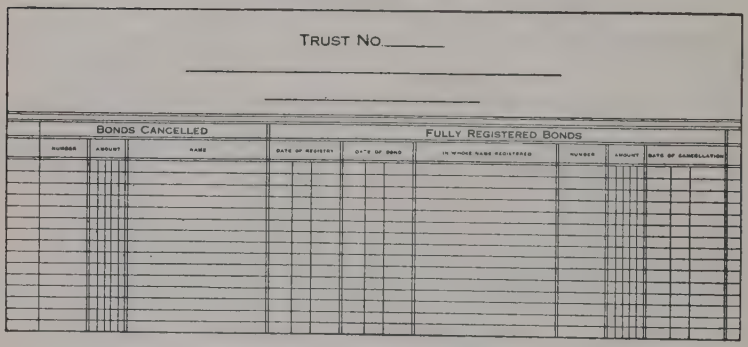
FORM 270

REGISTRAR'S RECORD



FORM 271

REGISTRAR'S RECORD



There are advantages of full registration under certain conditions. Thus if a person holds many bonds of the same issue it may be a saving of time to have his interest mailed to him by check instead of clipping the coupons. Again, the owner may have the check for interest mailed direct to his bank, thus enabling him to be absent at long intervals without interfering with his interest collections. In general, however, registration as to either principal or principal and

interest is the exception to the usual procedure of bondholders. In case the bonds are sold the registration must be cancelled, a procedure involving time and trouble.

Unregistered bonds are negotiable, being transferable by delivery. Most bonds are held in this form.

D. As to Whether Open or Closed

45. Closed-End Mortgages

A closed-end mortgage is one under which no additional bonds may be issued. Any further attempt to place additional mortgages on the same property results merely in establishing junior liens. An illustration of a closed-end mortgage is that securing an issue of $2,500,000 First Mortgage 6% Sinking Fund Gold Bonds of the Tacony-Palmyra Bridge Company. This issue represents less than 54% of the company's total investment, but no further bonds of this rank may be issued, all other securities being junior liens.

46. Limited Open-End Mortgages

Most modern corporate mortgages are of the limited open-end type. A company desiring to borrow $1,000,000 now but anticipating further future requirements of $5,000,000 may, if it has sufficient security, execute a mortgage for $6,000,000, sell $1,000,000 of bonds now and reserve the remaining authorized $5,000,000 for future needs. Under this management all of the bonds rank alike, whereas if a new mortgage is executed each time additional funds are required each lien will be junior to that of the preceding one, unless different property is mortgaged each time. The advantages of one large issue over several small ones from the point of view of marketability and saving of clerical work is obvious. Thus the indenture of the Southern Counties Gas Company of California, which secures a $12,000,000 issue of First Mortgage 4½% Gold Bonds, Series 1968,

provides that $100,000,000 of bonds may be issued thereunder.

Not infrequently bonds issued in series are protected by one mortgage. Thus the $20,000,000 First Mortgage 6% Sinking Fund Gold Bonds, Series A, of the Westphalia United Electric Power Corporation, dated January 1, 1928, due January 1, 1953, are protected by an indenture securing an additional $30,000,000 which may be issued in the future. "Additional bonds (other than bonds for refunding) may be issued for a principal amount not to exceed 66 2/3% of the cost or fair value, whichever is less, of additional fixed properties, under restrictions to be set forth in the indenture, but only if combined net earnings (as defined therein) shall have been not less than three times the annual interest on all bonds to be outstanding under the indenture."

Some such provision as the above, prohibiting the issuance of further bonds under an indenture unless earnings, or value of plant, or both, are up to required standard are a frequent and usually desirable provision of trust deeds having open-end provisions. This is an especially desirable feature of unlimited open-end mortgages.

E. As to Yield

47. The Rate of Interest

Various factors enter into the determination of the rate of interest a given bond shall carry. The junior lien bonds or debentures of any company naturally must carry a higher rate of interest than its prior lien bonds, because the risk which the purchaser accepts is greater. The rate of interest is also affected by the money market, which in turn is affected by business conditions generally. During the war interest rates were high and companies having good security were compelled to pay 7% or more for money, whereas in 1928 the same companies were paying in the neighborhood of 5%.

The rate of interest which a bond carries should not be

confused with the yield. Only when a bond is purchased at par does the yield equal the rate. If a bond is bought below par the yield is higher than the rate, and if bought above par the yield is less than the rate, providing the bond is held until redeemed at par at maturity. If a bond is called at a premium the yield may be greater than the rate, whereas if held to maturity the yield would be less than the rate. This is based on the assumption that the premium received is regarded as interest.

When bonds are marketed they are priced on a yield basis. Thus the Secured Gold Debentures, 5% Series due 1978, were priced at 93½ and accrued interest to yield over 5.35%, and the First Mortgage 4% Gold Bonds, Series A, of the Nashville, Chattanooga & St. Louis Railway, dated February 1, 1928, due February 1, 1978, were offered at 97% and accrued interest to yield 4.14% to maturity. Several bond tables may be had giving prices for all usual terms and rates.

The purchase and sale of bonds at a discount or premium renders necessary the amortization of the discount or premium account, as the case may be, provided they are held as a permanent investment. For bonds held temporarily amortization is not usually necessary.

48. Income Bonds

In case of income bonds interest is paid only if earned. Usually if not all of the interest is earned as much is paid as is earned. Sometimes the interest on income bonds is made cumulative. Some income bonds are debentures while others enjoy the security of a junior mortgage. Income bonds thus resemble stocks in some respects, but of course take preference over stocks of the issuing company. In connection with issues of income bonds various questions arise in determining just what the income of the issuing company is. For example, what depreciation shall be allowed in order to determine income available for interest on income bonds?

49. Adjustment Bonds

Usually adjustment bonds are income bonds issued to adjust a debt which has been compromised.

50. Participating Bonds

Participating bonds are those which pay a fixed rate of interest and in addition share in the profits of the company under prescribed conditions.

F. As to Special Privileges

51. Convertible Bonds

Convertible bonds are those made exchangeable into some other form of security of the issuing company under prescribed conditions. Most convertible issues are sold by companies which have exhausted their first-class security or whose credit position has been impaired, the privilege of conversion being intended as a kind of supplement to the available security in form of tangible assets. It is necessary, of course, for the issuing company to reserve a sufficient amount of the authorized security into which conversion may be made to make the conversion whenever required. Conversion is usually, but not always, at the option of the holders of the bonds; occasionally the company retains the privilege to exercise the conversion.

Perhaps the most common convertible arrangement is that of bonds into common stock, although preferred stock is frequently made convertible into common stock, and a frequent convertible ratio is that of par for par, i.e., $1,000 par of bonds is made convertible into ten shares of common stock each share having a par value of $100; but from this there are many variations.

Convertible bonds are popular with investors because they combine the fixed interest income characteristic of bonds with the speculative possibilities of common stocks, at least when conversion is into common stock. When first marketed

convertible bonds usually sell on a strictly investment basis; but if the company prospers the convertible bond ceases to sell on an investment basis and fluctuates in sympathy with the fluctuations in market price of the security into which conversion may be made. Frequently the convertible privilege expires on a given date, so that the bondholder loses his right of conversion unless he exercises it on or before that date.

It is usually to the advantage of a company to bring about conversion in case of bonds convertible into common stock because its fixed charges are thereby reduced.

Some illustrations of convertible bonds follow:

The Commercial Investment Trust Corporation has outstanding an issue of $15,000,000 6% Convertible Debentures, dated March 1, 1928, maturing March 1, 1948. These are convertible into cumulative 6½% preferred stock having a par value of $100, at the rate of 10 shares for each $1,000 debenture.

The National Gas & Electric Corporation has an issue of $1,800,000 Three-year 5½% Convertible Gold Notes, dated February 1, 1928, maturing February 1, 1931. These are convertible, up to and including October 1, 1930, or until 30 days prior to any date specified for redemption if called prior to that date, at the option of the holders, into ten shares of non par value cumulative preferred stock for each $1,000 face value of notes.

The Southern Asbestos Company has outstanding an issue of Ten-year Sinking Fund 6% Convertible Gold Debentures, dated December 15, 1927, due December 15, 1937, each $1,000 debenture being convertible at the option of the holder into forty shares of the company's common stock, at any time on or before December 15, 1932; 50,000 shares of non par value stock are reserved for conversion of these debentures.

The New England Gas and Electric Association, a Massachusetts voluntary association, has an issue of $17,000,000 5% Convertible Gold Debenture Bonds, dated September

1, 1927, due September 1, 1947. An aggregate of $8,500,000 of these bonds are convertible in the order of surrender for conversion on the first day of any month through September 1, 1931, into $5.50 dividend series preferred shares of the association at the rate of 10 shares for each $1,000 bond.

52. Bonds with Stock Warrants

Sometimes bonds are issued with stock warrants attached, granting to the buyer of a bond the privilege of buying a specified amount of the company's capital stock at a specified price. Such warrants become valuable if the market price of the stock purchasable goes higher than the price at which the bondholder is privileged to purchase it.

The Hamilton Gas Company has an issue of First Mortgage 6½% Sinking Fund Gold Bonds, Series "A," dated December 1, 1927, due December 1, 1937. Each holder of a $1,000 bond of this issue is entitled to purchase a unit of eight shares of the company's common stock, without par value, at $5 per share on or before December 1, 1930; thereafter to and including December 1, 1932, at $7.50 per share; thereafter to and including December 1, 1934, at $10 per share; thereafter to and including December 1, 1935, at $12.50 per share; and thereafter to December 1, 1937, at $15 per share.

Stock purchase warrants may or may not be detachable. An illustration of detachable stock purchase warrants are the $1,500,000 Twenty-five Year 6½% Sinking Fund Mortgage Bonds of the American Woman's Realty Corporation, dated December 1, 1927, due December 1, 1952. These bonds carry detachable warrants entitling the holder to purchase common stock of the company of $50 par value on the basis of 10 shares for each $1,000 bond at the following prices: Until November 30, 1929, at $50 per share the price increasing $1 per share each year up to $58 for the year ending November 30, 1937, after which the rights cease to be valid.

Accounting for Bond Issues

53. Bonds Authorized and Issued

As is frequently done in case of issues of capital stock, an entry may be made for the total authorized issue of bonds, whether or not all are to be sold at once. In such case, the charge is to unissued bonds and the credit to bonds authorized, thus:

Unissued First Mortgage 5% Gold Bonds	$1,000,000	
To Authorized First Mortgage 5% Gold Bonds		$1,000,000
For issue of First Mortgage 5% Gold Bonds authorized by resolution of the board of directors. See Minute Book, page —.		

In case $500,000 of the above issue is sold for cash at a premium of 5, the entry is:

Cash	$525,000	
To Unissued First Mortgage 5% Gold Bonds		$500,000
Premium on Bonds		25,000
For sale of $500,000 First Mortgage 5% Gold Bonds at 105.		

If, instead, the bonds are sold at 95 the entry is:

Cash	$475,000	
Discount on Bonds	25,000	
To Unissued First Mortgage 5% Gold Bonds		$500,000
For sale of $500,000 First Mortgage 5% Gold Bonds at 95.		

In case no formal entry is made for the bonds authorized, the word "Unissued" is omitted in the second and third entries above.

As a rule the amount of the authorized issue is not expressed in the balance sheet, unless all of the issue happens to be outstanding, in which event the amount authorized corresponds to the amount issued. It would appear that in case of open-end mortgages some means should be taken to

apprise the reader of the balance sheet of the situation, possibly in a footnote appended to the balance sheet.

54. Bonds Sold Through Bankers

Most large issues of bonds are underwritten and sold by an independent investment house experienced in money market conditions and having an established list of customers. In such case the amount to be received is agreed upon between the investment banker and the issuing company, all risk of being able to dispose of the bonds being assumed by the banker. On the books of the issuing company the entry is:

Jones & Co., Bankers	$475,000	
Discount on Bonds	25,000	
To Unissued First Mortgage 5% Gold Bonds		$500,000

When Jones & Company turn over the cash the entry is:

Cash	$475,000	
To Jones & Co., Bankers		$475,000

55. Contingent Liability on Guaranteed Bonds

Parent companies sometimes guarantee the interest on bonds of their subsidiaries. This is a contingent liability which, though not usually expressed on the parent company's balance sheet, should be clearly set out in the annual report. If a consolidated balance sheet is made up the guaranteed bonds will be shown therein. If the issuing company defaults and the guaranteeing company pays the interest, the charge is against the issuing company. On its books the issuing company charges interest and credits the guaranteeing company.

56. Accounting for Securities Deposited as Collateral

Many bond issues are secured by collateral consisting of stocks or bonds, or both, owned by the issuing company. These are deposited with the trustee to whom the indenture is made out. When the collateral is transferred the invest-

ment account in which the securities have been carried should be credited and a pledged investments account charged. This procedure is important because the pledged securities are no longer at the free disposal of the company which owns them.

57. Accounting for Equipment Trust Bonds

Equipment trust bonds usually mature serially, one series each year. Each time the company which leases the equipment pays off a series it increases its equity in the equipment. When all series are paid off it becomes absolute owner through transfer of title from the trustee. The initial cash payment should be charged to an Equity in Leased Equipment account, and as each series of equipment bonds is liquidated an entry should be made crediting the Leased Equipment account. When all equipment bonds are paid off and title to the equipment is transferred to the company, an entry should be made transferring the balance from the Leased Equipment account to an Equipment Owned account.

Assume that the Air Line Railroad Company issues $3,000,000 of 4½% equipment trust bonds secured on equipment costing $4,000,000. The bonds mature annually over a period of six years, $500,000 each year. An initial payment of $1,000,000 is made to the manufacturer and expenses in connection with the issue amount to $5,000. The entries are:

January 1, 19...		
Equity in Leased Equipment.....	$1,000,000	
To Cash		$1,000,000
Initial payment made on equipment secured under issue of $3,000,000 4½% collateral trust bonds dated Jan. 1, 19...		
Expense of Equipment Bond Issue..	5,000	
To Cash		5,000
For expenses incurred in issue of $3,000,000 4½% equipment bonds dated Jan. 1, 19...		
Leased Equipment.....	3,000,000	
To Equipment Trust Bonds.....		3,000,000

For issue of $3,000,000 4½% equipment bonds dated January 1, 19...

	January 1, 19... (Next Year)	
Equipment Trust Bonds	$ 500,000	
To Cash		$500,000
For redemption of 4½% equipment bonds dated Jan. 1, 19...		
Equity in Leased Equipment	500,000	
To Leased Equipment		500,000

When all equipment bonds have been paid off the following entry is in order:

Equipment	$4,000,000	
To Equity in Leased Equipment		$4,000,000

Of course suitable allowance should appear for depreciation in the proper depreciation reserve account.

58. Treatment of Accrued Interest

Bonds are sold at a given price plus accrued interest. Thus if an issue of bonds is dated January 1, 1928, but the sales are made at intervals over a period of several months, resales being made by the various brokers and bankers to whom the investment banker sells them in large lots, it is evident that in case of most sales of bonds, in fact in all sales except those made on the day the bonds are dated or on subsequent interest dates, which usually occur semi-annually, accrued interest must be considered. The following reproduction of a broker's statement of an actual sale will make clear certain points involved.

Broker & Company
Chicago, Illinois

Chicago, July 29, 1926
Due July 30, 1926

Mr. J. D. Grant,
2716 Earling Ave.
Elgin, Ill.

Dear Sir:

We have this day sold for your account and risk:
$1,000 Berlin Municipal External 6½% April 1,

1950 @ 91¾	$917.50
Int. from Apr. 1 to July 30—119 Days	21.49
	$938.99
Less Commission	2.00
	$936.99

Yours very truly,
BROKER & CO.
By J. S. Gould,
Investment Dept.

It is understood and agreed:

1. That transactions executed on the New York Stock Exchange, the Boston Stock Exchange, and other exchanges, shall be subject to and are to be governed by the rules and customs of the Exchange where executed and its Clearing House; transactions in outside securities are subject to a reasonable commission according to the service rendered.

2. That all securities carried in your account, whether bought by us or deposited by you as security therefore, may be loaned or pledged by us, either separately or together with other securities, either for the sum due thereon or for a greater sum, and may be sold or bought either at public auction or private sale—all without further notice—when such sale or purchase is deemed by us necessary for our protection.

E. & O. E.

Interest was last paid on this bond on April 1, 1926, so that at the time of delivery, viz., July 30, 1926, interest had accrued for 119 days, as follows:

April	29	days
May	31	"
June	30	"
July	29	"
	119	days

This interest amounts to $21.49 and is said to be the amount accrued at date of delivery. It is added to the price of the bond, making a total of $938.99, which, less the commission of $2.00 deducted by the broker, is the amount turned over to the seller or credited to his account by the broker. The entry on the books of the seller on July 30, 1926, is as follows:

Cash (or Broker & Co.)	$936.99
Commissions	2.00

To Investments		$917.50
Interest Earned		21.49

Sale Berlin 6½ at 91¾.

The above entry is based on the assumption that the bond was also purchased at 91¾. If, however, the bond was purchased at 89 on July 18, 1925, no commission being paid because it was then first issued, the entry on the books of J. D. Grant would be as follows:

Investments	$890.00	
Interest Paid	19.68	
To Broker & Co. (or Cash)		$909.68

Purchase Berlin 6½ at 89.

Then the entry for sale on July 30, 1926, should be:

Cash (or Broker & Co.)	$936.99	
Commissions	2.00	
To Investments		$890.00
Interest Earned		21.49
Profit on Sale of Securities		27.50

Sale Berlin 6½ at 91¾.

Note that interest accrued on the bond when purchased is charged to "Interest Paid" account; when sold, to "Interest Earned" account. This is preferable to entering these items in one account termed "Accrued Interest." When the coupon on the above bond was cashed on October 1, 1925, the entry on J. D. Grant's books was:

Cash (or Broker & Co.)	$32.50	
To Interest Paid		$19.68
Interest Earned		12.82

For collection of coupon on Berlin 6½.

The same result is secured if only an Interest Earned account is kept, the charge and credit made in the above entries to Interest Paid account being instead made to the Interest Earned account.

In case of a company selling bonds upon which interest has accrued, it receives payment for the amount of the interest accrued since the last interest date. Any coupons which mature before the bonds are sold are clipped off and

disregarded, since the company incurs no obligation as regards them. The entry would be as follows:

Cash	$201,640	
To Unissued 6% Bonds		$200,000
Bond Interest		1,640
Sale of $200,000 6% bonds at par and accrued interest.		

When the interest falls due and is paid the entry is:

Interest Expense	$4,360	
Bond Interest	1,640	
To Cash		$6,000

59. Funds for Paying Bond Interest

A company must always arrange to have money in readiness for liquidation of its interest obligations. Interest on most bond issues is payable semi-annually, but occasionally it is payable quarterly. If a company makes its own interest disbursements it is usually best to place the amount required to pay the total interest charge on a given bond issue in a separate bank account so that interest checks and returned coupons may be handled separately from other cash disbursements. It is becoming the custom to delegate the duty of taking care of these details to the company's fiscal agent, to whom a check is made out for the full amount of the interest requirements and who then attends to the details of mailing interest checks to holders of fully registered bonds, cashing coupons as they are submitted, and returning same to issuing company for cremation or whatever other disposition may be thought necessary. Coupon owners usually cash their coupons at their own banks, depositing them the same as other cash items; their banks then send them to the bank holding the interest money for their redemption. The names and location of one or two depository banks are usually stated on the face of the coupons. The following entry is in order when the issuing company turns over a check to its fiscal agent for the semi-annual interest requirement:

	December 31, 19...	
Interest on Bonds (naming issue)	$50,000	
To Cash		$50,000
For money transferred to trustee in preparation for payment of interest on the company's ..... bonds falling due January 1, 19...		

Even though a company makes its own interest disbursements the advantage of setting aside a fund just sufficient to meet the requirements is obvious, since some coupons may be submitted long after the due date. Nevertheless the company becomes liable for the full amount on the due date and the funds required cannot be considered as available for other uses. At any rate, some means should be employed to show the full amount of interest expense incurred in any given fiscal period, whether or not the cash is disbursed in that period. In case it is not desired to set aside the fund necessary to meet all interest requirements on the day it falls due, the expense and the corresponding liability may be expressed by means of the following journal entry:

	December 31, 19...	
Interest on Bonds (naming issue)	$50,000	
To Interest Payable on Bonds (naming issue)		$50,000
To show liability for interest due Jan. 1, 19...; also to bring interest expense on books for fiscal period ending Dec. 31, 19...		

In case this procedure is followed cash is disbursed only as coupons are submitted, the charge being against the Interest Payable on Bonds account. The credit balance in this account shows the liability of the company at any given time on coupons due but for some reason not as yet submitted.

60. Monthly Interest Accruals

The general principles of accruals of interest have been considered. Since most companies desire monthly statements of income as well as monthly balance sheets it is

necessary that entries for accrued interest be made in respect to all outstanding bonds issued by the company as well as in respect to all interest bearing obligations of other companies or political divisions which the company happens to own.

To illustrate, assume that a company is organized as of January 1, 1929, and issues $100,000 of 20-year 6% bonds as of that date, selling them at par. On February 1 of the same year it buys $10,000 of 6% bonds of another company at par and dated January 1. Monthly statements are required. What entries are required in respect of interest?

As of January 31:

Interest Expense	$500	
To Accrued Interest on Bonds Payable		$500

For one month's interest accrued on $100,000 of 6% bonds outstanding.

On February 1 this entry is reversed.

As of February 28:

Interest Expense	$1,000	
To Accrued Interest on Bonds Payable		$1,000

For two months' interest accrued on $100,000 of 6% bonds outstanding.

Accrued Interest on Bonds Owned	50	
To Interest Earned		50

For one month's interest accrued.

Both entries are reversed on March 1.

61. Bond Discount and Premium

Since it is customary to show bonds at their par value in the ledger the difference between this and the amount of cash received for them must be carried to a bond discount account or a bond premium account, accordingly as the amount of cash received is less than or in excess of the par of the bonds. In connection with the flotation of an issue of bonds certain expenses are incurred. These may be charged to a distinct expense account or, as is not infrequently done, to the discount on bonds account. Theoretically, the expenses should not be carried to the bond discount account, since this

represents an interest adjustment account to be amortized over the life of the bonds. If an issue of 6% bonds of a given company could be marketed at par, then an issue of 5% bonds of the same company having equal security would sell at a considerable discount to afford the buyer the same yield, viz., 6%. It is apparent that though the interest rate is 5% on the bond which sells at a discount the buyer is getting a higher return because he bought at a discount, paying possibly $900 for a bond, but will receive $1,000 when the bond matures. In other words, in addition to the money actually paid the buyer as interest he is also receiving interest in the form of an accumulation in principal. If the bond matures in ten years this amounts to approximately $10 a year, which added to the $50 he receives as interest in cash equals the same amount he would receive yearly in cash had he bought a 6% bond instead of a 5% bond.

The above statements, while not strictly accurate, are adequate to explain the principle involved in bond discount and premium, viz., that they represent an adjustment of interest. Moreover, for most practical purposes the plan of equal distribution of discount or premium over the life of the bond is sufficiently accurate.

To illustrate, assume that a company issues $100,000 of 5% bonds due in 10 years, selling them at 90. The entry when the bonds are sold is:

Cash	$90,000	
Discounts on Bonds	10,000	
To Bonds		$100,000

Periodically, either monthly or yearly, according to requirements, the correct proportion of the discount should be transferred to the Interest Expense account. In this case 1/120 of $10,000, or $83.33, is the monthly charge to interest on account of amortization of the Discount on Bonds account. The entry at the end of the first month is:

Interest Expense	$83.33	
To Discount on Bonds		$83.33

At the same time the entry for accrued interest is:

Interest Expense	$416.67	
To Interest Accrued		$416.67

This makes the total monthly charge to Interest Expense account $500. At the end of six months the Interest Accrued credit balance amounts to $2,500, dropping the 2 cents, which arise from failure to carry the decimal point beyond two places. This is the amount of cash to be disbursed as interest. Note, therefore, that the semi-annual charge to Interest account amounts to $3,000, whereas the amount disbursed for interest is only $2,500, the difference representing the amount of the Discount on Bonds account amortized.

To illustrate the procedure in case bonds are sold at a premium, assume that a company issues $100,000 of 7% bonds due in 10 years, selling them at 110. The entry when the bonds are sold is:

Cash	$110,000	
To Premium on Bonds		$ 10,000
Bonds		100,000

Periodically, either monthly or yearly, according to requirements, the correct proportion of the premium should be transferred to the Interest Expense account. In this case 1/120 of $10,000, or $83.33, is the monthly credit to interest on account of amortization of the Premium on Bonds account. The entry at the end of the first month is:

Premium on Bonds	$83.33	
To Interest Expense		$83.33

At the same time the entry for accrued interest is:

Interest Expense	$583.33	
To Interest Accrued		$583.33

This results in a monthly charge to Interest Expense account of $500. At the end of six months the Interest Accrued account credit balance amounts to $3,500. This is the amount of cash to be disbursed as interest, whereas the semi-annual interest charge amounts to $3,000, the difference

representing the amount of the Premium on Bonds account amortized.

62. Sinking Fund Requirements of Trust Indentures

Sinking funds are established in accordance with the provisions of the trust deed. It is usually provided that funds for establishment of the sinking fund shall be paid over periodically to the trustee. The following extracts from trust deeds will show what some of the variations are in this respect.

63. Sinking Fund of Amalgamated Phosphate Company

Below is reproduced Article V of the first mortgage trust indenture of the Amalgamated Phosphate Company to the National City Bank of New York, as trustee, securing its First (closed) Mortgage Sinking Fund 6% Gold Bonds, dated August 2, 1926, due August 1, 1936, explaining the bond redemption and sinking fund arrangements under the trust.

Section 28. The Bonds issued under this Indenture shall be subject to redemption, in whole or in part, either at the option of the Company or through the operation of the Sinking Fund hereinafter provided for, on any semi-annual interest date prior to maturity, at a redemption price equivalent to 104 per cent. of the principal amount thereof, if redeemed on or before August 1, 1928, and, if redeemed after August 1, 1928, and on or before August 1, 1934, at the said redemption price less an amount equal to one-half of one per cent. of such principal for each whole year intervening between January 31, 1928, and the date of redemption, and if redeemed after August 1, 1934, at a redemption price equivalent to 100½ per cent. of the principal amount thereof, all in the manner hereinafter provided in this Article Fifth.

Section 29. If at any time the Company shall desire to redeem less than all the Bonds at the time outstanding, the Company shall notify the Trustee, in writing, of the aggregate principal amount of Bonds which it desires to redeem, specifying the interest date (which shall not be less than forty days after such notification) on which it desires to make redemption. As soon as practicable thereafter, the Trustee shall determine by

lot, in any manner deemed by the Trustee to be fair, the serial numbers of the Bonds to be redeemed, and shall certify the same to the Company. The Company shall thereupon publish in one daily newspaper of general circulation, printed in the English language, published in the Borough of Manhattan, City and State of New York, once a week for four successive weeks (the publication to be not less than thirty days prior to such redemption date), notice of such intended redemption, designating the redemption date, the serial numbers of the Bonds to be redeemed and the redemption price thereof, and requiring that such Bonds be then surrendered at the Head Office of the Trustee, in the Borough of Manhattan, City and State of New York, for redemption at the said redemption price, and giving notice, also, that interest on such Bonds shall cease from and after the designated redemption date. If any of the Bonds so to be redeemed shall be registered, notice of redemption shall also be mailed to the respective registered owners thereof, at least thirty days prior to the redemption date, at their addresses appearing upon the Bond registration books; provided, that such mailing shall not be a condition precedent to such redemption, and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of such Bonds. If at any time the Company shall desire to redeem all the Bonds at the time outstanding, it shall give notice thereof in like manner as above provided, except that the notice of redemption need not specify the serial numbers of the Bonds to be redeemed.

Notice of redemption having been given as in this Section 29 provided, and an amount in cash sufficient to redeem the Bonds designated in the notice having been deposited with the Trustee for that purpose on or before the redemption date, the said Bonds shall, on the redemption date designated in such notice, become due and payable at the said Head Office of the Trustee, at the redemption price thereof then payable, as provided in Section 28 hereof; and upon the surrender thereof, with all interest coupons maturing subsequently to the said redemption date, and, in the case of Bonds which shall at the time be registered, accompanied by the duly executed assignments or transfer powers, such Bonds shall be paid and redeemed out of the funds so deposited with the Trustee, at the said redemption price. After the date so fixed for redemption (unless the Company shall make default in providing cash for the redemption thereof), the Bonds so designated for redemption shall cease to bear further interest or to be entitled to any of the benefits or security provided by this Indenture, or any other rights, except with respect to their pro

rata share in the funds deposited for their payment as in this Section 29 provided; but all interest coupons pertaining to such Bonds, which shall have matured on or prior to the redemption date, shall continue to be payable to the respective holders thereof, but without interest thereon.

SECTION 30. If at any time notice of redemption of all outstanding Bonds shall have been given as provided in Section 29 hereof, and there shall have been deposited with the Trustee an amount in cash sufficient to redeem all such Bonds at the redemption price payable on the redemption date designated in such notice, and to pay and discharge any and all sums then due or to become due hereunder, whether for principal or interest, or otherwise, and there shall have been paid to the Trustee all costs, charges and expenses payable to it, the Trustee, in such case, on the demand and at the cost and expense of the Company, shall cancel and discharge the lien of this Indenture and shall execute and deliver to the Company such deeds or discharges as shall be requisite to discharge the lien hereof and to reconvey to or to revest in the Company the properties then subject to the lien hereof.

SECTION 31. As and for a Sinking Fund for the retirement of the Bonds, the Company will pay over to the Trustee, from time to time, so long as any of the Bonds remain outstanding and unpaid, the following sums:

On or before June 15 in each year, beginning in the year 1927, a sum in each case equal to 35 cents for each ton of 2240 pounds of phosphate rock mined and shipped from any of the mortgaged premises in the twelve months ended on May 31 immediately next preceding, plus the amount of the premium at the then current redemption price on a principal amount of Bonds equivalent to the amount of the aforesaid sum; provided, that if the total of such payments shall in the year 1927 be less than a sum sufficient to redeem, at the current redemption price, $150,000, aggregate principal amount, of Bonds, and in any year subsequent to 1927 be less than a sum sufficient to redeem, at the current redemption price, an aggregate principal amount of Bonds, which, added to the aggregate principal amount of Bonds which shall have been previously redeemed, shall equal an aggregate principal amount of Bonds equivalent to $150,000, aggregate principal amount, times the number of whole years intervening between July 31, 1926 and the redemption date next following, the Company will increase the amount of such payments by a sum equal to the amount of such deficiency.

All such payments shall be made without regard to whether in any case, the mining and shipping of phosphate rock be done by the Company, a lessee or any other operator whomsoever, acting, for, through, or under the Company.

Every Sinking Fund payment shall be accompanied by a tonnage statement verified by an affidavit of the President or a Vice-President of the Company showing the amount of phosphate rock mined and shipped from the whole of the mortgaged properties during the period covered by the payment, and the books, accounts, mines and property of the Company shall be open to inspection by the Trustee at any reasonable time for verification of said tonnage statements; but the Trustee shall not be required to make any such inspection. All such tonnage statements shall be reported by the Company to its accountants and shall be included in the report of such accountants to be filed with the Trustee as provided in this Indenture.

Any Sinking Fund payment may be made, at the option of the Company, either in cash or in Bonds, or partly in cash and partly in Bonds; and any Bonds delivered to the Trustee in discharge, in whole or in part, of any Sinking Fund payment shall be accepted by the Trustee at the current redemption price thereof. Any cash at any time paid into the Sinking Fund shall be applied by the Trustee to the redemption of Bonds in the following manner:

If, forty days prior to any interest date, there shall be on deposit with the Trustee for account of the Sinking Fund a sum in cash sufficient to redeem, at the redemption price thereof payable on such interest date, Bonds of an aggregate principal amount of $10,000, or more, the Trustee shall select by lot, in any manner deemed by the Trustee to be fair, for redemption on such interest date, a sufficient number of Bonds to absorb the said cash, as nearly as may be, and shall thereupon cause notice of redemption of the Bonds so selected to be given in substantially the same manner and with like effect as hereinbefore provided in Section 29 hereof.

Any moneys which may at any time be transferred to the Sinking Fund, pursuant to the provisions of Sections 26 and 36 hereof, respectively, shall be deemed an additional payment into the Sinking Fund, and the obligation of the Company to make subsequent or concurrent payments into the Sinking Fund in the respective amounts hereinbefore in this Section 31 provided shall not be affected by any such additional payment.

SECTION 32. All Bonds at any time redeemed pursuant to any of the provisions of this Indenture, and all Bonds at any time delivered to the Trustee, in lieu of cash, in discharge, in whole

or in part, of any Sinking Fund payment, shall forthwith be cancelled by the Trustee and shall be delivered by it to the Company or upon its written order; and no Bonds shall at any time be issued hereunder in lieu thereof. All expenses of every kind in connection with the administration of the Sinking Fund shall be borne and paid by the Company.

64. Sinking Fund of National Dairy Products Corporation

Below is reproduced Article IV of the collateral trust indenture of the National Dairy Products Corporation to the Equitable Trust Company of New York, as trustee, securing its Fifteen-year 6% Collateral Trust Notes, dated November 1, 1925, due November 1, 1940, explaining the sinking fund provision relative to these notes:

Section 1. So long as any of the Notes are outstanding, the Corporation agrees that as a Sinking Fund for the retirement of said Notes it will on or before the 1st day of November 1926, and on or before the 1st days of May and November in each year thereafter, up to and including May 1, 1938, pay to the Trustee, a sum in gold coin of the United States of America of the standard weight and fineness existing on November 1, 1925, sufficient to redeem a quota of $300,000 in principal amount of said Notes at the redemption price prevailing at the time of such payment, with accrued interest in each instance to the ninetieth (90th) day after such Sinking Fund payment is made, and on or before the 1st day of November, 1938, and on or before the 1st days of May and November in each year thereafter up to and including May 1, 1940 it will pay to the Trustee a sum in like gold coin sufficient to redeem a quota of $450,000 in principal amount of said Notes at the redemption price prevailing at the time of such payment with accrued interest in each instance as aforesaid.

In lieu of paying cash for all or any part of any such Sinking Fund payment, the Corporation may on or before the 1st days of May and/or November in any such year, deliver to the Trustee for cancellation Notes with all unmatured coupons thereto appertaining, and the amount of Notes for the redemption of which the Corporation shall be obliged to deposit cash on any Sinking Fund payment date, as provided above, shall be reduced by the principal amount of any such Notes so delivered to the Trustee and not previously credited against said Sinking Fund obligations of the Corporation.

All sums held by the Trustee in said Sinking Fund, until applied

as hereinafter provided, shall be held by it as a trust fund for the security of the Notes. So long as the Corporation is not in default hereunder to the knowledge of the Trustee, it shall allow and pay to the Corporation interest thereon in the interim at such rate as the Trustee allows at the same time upon deposits of a like nature.

The Corporation may anticipate any such Sinking Fund requirement, in whole or in part, by redemption of Notes or by the delivery of Notes to the Trustee for cancellation in excess of any current Sinking Fund quota or in advance of any later Sinking Fund quota, and shall be credited on its obligation, as aforesaid, in subsequent periods for any such excess or advance resulting from such excess or advance redemption or delivery of Notes for cancellation.

SECTION 2. Each Sinking Fund payment shall, after receipt thereof by the Trustee, be applied by it, as provided in Section 3 of this Article, to the purchase of Notes, at not exceeding the redemption price prevailing at the time of the receipt by it of such Sinking Fund payment, with accrued interest to the date of purchase, until an aggregate in principal amount of said Notes equal to the current Sinking Fund quota, with all unmatured coupons, shall have been delivered to the Trustee by the Corporation or shall have been acquired by the Trustee through purchases as aforesaid for each six (6) months' period. If prior to the twenty-first (21st) day after any such Sinking Fund payment is made, the Trustee shall not have been able to purchase Notes aggregating in principal amount, with any Notes delivered to it by the Corporation in lieu of cash, the full amount of the current Sinking Fund quota, with all unmatured coupons, the Trustee shall proceed forthwith to call for redemption as provided in Section 3 of this Article, and shall pay and retire, as hereinafter provided, Notes sufficient in principal amount to make up any such deficiency.

SECTION 3. The Trustee may purchase Notes with Sinking Fund moneys up to and including the twentieth (20th) day after any Sinking Fund payment is made, either with or without advertising for written proposals to sell Notes for that purpose, as it may in its uncontrolled discretion determine. In case a part of any Sinking Fund installment has been applied to the purchase of Notes without advertisement, any notice published by the Trustee shall relate only to the balance of the Sinking Fund moneys then available.

In case the Trustee advertises for written proposals, it shall in such advertisement invite sealed proposals to be made to it

at or before noon on a date therein designated for the sale and delivery to it on the twentieth (20th) day after any Sinking Fund payment is made, at the principal office of the Trustee in the Borough of Manhattan, City and State of New York, of Notes of a principal amount sufficient to complete the current Sinking Fund quota at a price (to be specified in said notice) not to exceed the redemption price then prevailing, with interest accrued to the twentieth (20th) day after such Sinking Fund payment was made. From the Notes offered in response to such Notice the Trustee shall accept such Notes as are offered at the lowest prices not exceeding the price aforesaid to an amount sufficient to complete the current Sinking Fund quota, and shall forthwith send notice of such acceptance to all parties whose offerings have been accepted. Should there be two or more proposals at the same price aggregating more than the amount which the Trustee has available for the purchase of Notes, after having accepted all proposals at lower prices, the Notes to be accepted may be selected by the Trustee by lot or in any usual manner in its discretion, provided, however, that the Trustee shall have the right to reject any or all proposals in whole or in part if it can at the time of receiving said proposals purchase the requisite amount of said Notes or any part thereof at a lower price than the price offered in the said proposals.

The Trustee shall as promptly as possible after the twentieth (20th) day after any Sinking Fund payment is made, proceed in the manner and with the effect provided in Article III hereof to draw by lot the number of Notes required at such time to complete the current Sinking Fund quota and to give, or cause to be given, either in its own name or in the name of the Corporation, the notices required by Article III hereof in order to redeem the Notes so chosen on the ninetieth (90th) day after such Sinking Fund payment was made, at the redemption price then prevailing, including accrued interest to such date.

The Trustee shall set aside from the moneys in said Sinking Fund an amount sufficient to retire the Notes so drawn and shall pay and retire such Notes with such moneys as herein provided. After reserving cash sufficient to redeem the Notes so to be called, the Trustee shall pay over to the Corporation the balance of any moneys then remaining in the Sinking Fund.

SECTION 4. If the pledged property shall be sold under decree of court in a suit for the foreclosure of this Indenture, then any moneys in the Sinking Fund shall be added to and dealt with as if they were part of the proceeds of such sale, unless Notes shall have been designated for redemption by said Sinking Fund

moneys in the manner above provided, in which case such moneys in the Sinking Fund to the extent required for the purpose shall be held for the payment of the Notes so designated for redemption.

All Notes purchased or redeemed or delivered to the Trustee for cancellation under the provisions of this Article, and all coupons thereto appertaining, shall immediately be cancelled by the Trustee and delivered to the Corporation, and shall not be reissued.

All expenses in connection with the operation of said Sinking Fund shall be borne by the Corporation, shall be paid to the Trustee by the Corporation on demand, and shall not be charged against the Sinking Fund or the Trustee.

65. Accounting for Sinking Fund Transactions

The entries on the books of the trustee and of the company must always be in agreement. Thus when the company pays cash to the trustee in accordance with the requirements of the trust deed the entry is:

July 1, 19..

Sinking Fund Trustee	.....	
To Cash		.....
For deposit of cash with trustee in accordance with trust indenture securing First Mortgage 5% Sinking Fund Bonds dated Jan. 1, 19..		

Upon the trustee's books the following entry is in order:

July 1, 19..

Cash	.....	
To A.B.C. Company		.....
For deposit of cash by A.B.C. Company in accordance with trust indenture securing their First Mortgage 5% Sinking Fund Bonds dated Jan. 1, 19..		

The above entries are in journal form, whereas in practice they would be made in specially ruled cash books. The explanations would also probably be in more abbreviated form.

Now, assuming that the trustee invests the cash in securities, the entry on the trustee's books is:

Investments for A.B.C. Company .....
To Cash .....

There is required no corresponding entry on the books of the company. If, however, in the first entry above, the debit had been made to Sinking Fund Cash instead of to Sinking Fund Trustee, it would now be in order to make the following entry on the company's books:

Sinking Fund Investments .....
To Sinking Fund Cash .....

When the trustee collects interest on the investments he has made for the sinking fund of the A.B.C. Company he makes the following entry:

Cash .....
To A.B.C. Company .....

The A.B.C. Company at this time makes this entry:

Sinking Fund Trustee .....
To Sinking Fund Income .....

The debit balance in the Sinking Fund Trustee account on the books of the company should at all times be in agreement with the credit balance in the A.B.C. Company account on the trustee's books.

66. Accounting for Sinking Fund Reserves

There is some confusion as to the meaning and use of sinking funds and sinking fund reserves, respectively. A sinking fund is an actual sum of money put in the hands of a trustee to be invested as seems fit. A sinking fund reserve, on the other hand, is an account kept on the books of the issuing company only. It may or may not accompany the establishment of a sinking fund, or it may, for practical purposes, be established without the establishment of a corresponding fund.

If the trust indenture provides that the sinking fund shall be set aside out of profits it is meant that profits shall be reserved on the company's books equivalent in amount to

the sinking fund. It is cash that is set aside, but by requiring that profits be reserved the financial standing is improved and the availability of cash for sinking fund purposes guaranteed to some extent. Thus, if at the time the following entry is made for cash transferred to the sinking fund,

Sinking Fund Trustee .....
  To Cash .....

it is desired to establish a reserve of equal amount, the entry is:

Surplus .....
  To Sinking Fund Reserve .....

and at any time that the sinking fund is increased, either through instalments paid into it or through collection of income by the trustee, an entry for the same amount charging Surplus account and crediting Sinking Fund Reserve account should be made on the books of the issuing company. When the sinking fund is finally disbursed to redeem outstanding bonds and all accounts in connection with it are closed on the books of both trustee and company, the Sinking Fund Reserve account remains open, but now that its function of strengthening the financial position of the company for benefit of bondholders has been fulfilled it should be transferred back to the Earned Surplus account by means of the following entry:

Sinking Fund Reserve .....
  To Surplus .....

67. Redemption of Bonds

Bonds are redeemed in various ways. They may be paid off at maturity, called before maturity, refunded, or converted into some other form of security. Redemption by means of a sinking fund is a common arrangement, and necessitates consideration of the accounting procedure to be followed by both the trustee and the company. Some of the principles of sinking fund accounting have been considered above (pages 721-723. If the trustee uses his funds

to buy in bonds of the issue for which he is acting as trustee as rapidly as the funds are paid over to him by the company, he will probably be compelled to pay a premium in accordance with the provisions of the trust deed. Usually such redemption is made on an interest date, so that there is no accrued interest to be paid. Thus, assuming that $100,000 of 6% bonds of the XYZ Company are called at 102 the entry on the trustee's books is:

XYZ Company	$102,000	
To Cash		$102,000
For redemption of $100,000 of 6% bonds of the XYZ Company at 102, according to provision of the trust deed.		

The corresponding entry on the company's books is:

Bonds	$100,000	
Premium on Bonds Called	2,000	
To Sinking Fund Trustee		$102,000
For bonds called and redeemed by sinking fund trustee, etc.		

When bonds are redeemed at maturity the redemption price is usually the par value of the bonds, in which case no charge is made to the Premium on Bonds Called account.

When bonds are refunded the entry on the books of the refunding company consists in a charge to the account of the outstanding bonds and a credit to the account of the bonds issued in exchange for the old bonds.

When bonds are converted into stock the entry consists in a charge to the account of the bonds retired and a credit to the unissued capital stock account of the stock into which the bonds are convertible.

In case of collateral trust bonds the entries on the books of trustee and issuing company are as indicated above, but in addition entries are required to show the status of pledged collateral at the time the collateral is placed in the trustee's hands. The entry on the books of the issuing company is:

Pledged Investments .....

To Investments .....
For securities transferred to trustee, as follows:
(State details)

When the securities are later returned by the trustee, the bonds secured having been redeemed, the above entry is reversed.

FORM 272

NOTICE OF REDEMPTION

CENTRAL ILLINOIS UTILITIES COMPANY

First Mortgage Six Per Cent. Gold Bonds

NOTICE IS HEREBY GIVEN to the holders of all outstanding First Mortgage Six Per Cent. Gold Bonds of CENTRAL ILLINOIS UTILITIES COMPANY issued under and secured by the trust deed dated October 1, 1912, to Continental and Commercial Trust and Savings Bank, as Trustee (Continental National Bank and Trust Company of Chicago being now the Trustee under said mortgage), said bonds being dated October 1, 1912, and maturing serially on October 1, 1928, October 1, 1929, October 1, 1930, and October 1, 1932, that pursuant to the provisions of said mortgage and said bonds, all said described bonds outstanding will be redeemed and become due and payable on April 1, 1928, at the office of Continental National Bank and Trust Company of Chicago, in the City of Chicago, Illinois, at par and accrued interest to said date, together with a premium of three per centum (3%) upon the principal. Interest on each of said bonds will cease from and after April 1, 1928. All said bonds, with all coupons maturing on or after said date, should on that date be surrendered to said Trustee.

Any of the above bonds, with all unmatured coupons attached, will be accepted and prepaid at said office of the Trustee at any time prior to the redemption date at 103 and accrued interest to the date of redemption, less discount at the rate of four per centum per annum from date of payment to April 1, 1928.

This notice is given by Central Illinois Public Service Company, as successor to Central Illinois Utilities Company.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
By MARSHALL E. SAMPSELL,
President.

Dated January 6, 1928.

FORM 273

NOTICE OF REDEMPTION (ANOTHER FORM)

ASSOCIATED ELECTRIC COMPANY

Convertible Gold Bonds, 5½% Series Due 1946

To the Holders of

Convertible Gold Bonds, 5½% Series due 1946 of Associated Electric Company:

In accordance with the provisions of the Indenture, dated as of April 1, 1926, between Associated Electric Company and National Bank of Commerce in New York, as Trustee, and the indenture supplemental thereto, dated as of April 1, 1926, creating the original issue of *$65,000,000* of bonds of the above mentioned series, Associated Electric Company has elected to exercise the right to redeem and pay off on *May 1, 1928,* the sum of *$10,000,000* principal amount of its Convertible Gold Bonds, 5½% Series due 1946, issued under said Indenture of the total of about *$50,000,000* remaining outstanding.

The numbers of the bonds to be redeemed have been drawn by the Trustee under said Indenture and, pending final notice of redemption, information as to the numbers so drawn may be obtained upon application to *the investment security dealer from whom these bonds were purchased, the Associated Gas and Electric Company,* 61 Broadway New York City, the Trustee, *National Bank of Commerce in New York,* 31 Nassau Street, New York City, or from the depositary, *The Chase National Bank of the City of New York,* 57 Broadway, New York City.

The attention of the holders of these bonds who desire to continue their investment in bonds of the Associated Gas and Electric System, is called to the privilege, extended by Associated Gas and Electric Company in a recently published offer, of exchanging their bonds for *Gold Debenture Bonds, Consolidated Refunding 5% Series due 1968, of Associated Gas and Electric Company.*

The basis of exchange is *$1,100 principal amount of said new Bonds of Associated Gas and Electric Company, for the first $5,000,000 of said bonds deposited and thereafter $1,080 of new Bonds, or bonds of said series and/or other securities of Associated Gas and Electric Company, upon any one of several bases, for each $1,000 principal amount of said bonds of Associated Electric Company.*

Copies of the offer and of the circular describing these bonds

of Associated Gas and Electric Company may be obtained from investment security dealers or from Associated Gas and Electric Company, 61 Broadway, New York City, or The Chase National Bank of the City of New York, 57 Broadway, New York City.

Holders desiring to avail themselves of this privilege should immediately deposit their bonds with The Chase National Bank of the City of New York, 57 Broadway, New York City.

Dated February 3, 1928.

ASSOCIATED ELECTRIC COMPANY,
By M. C. O'KEEFFE,
Secretary.

FORM 274

NOTICE OF REDEMPTION (ANOTHER FORM)

NATIONAL PUBLIC SERVICE CORPORATION

To the holders of National Public Service Corporation Thirty-Year 6½% Sinking Fund Collateral Trust Gold Bonds, Series A, Due February 1, 1955, and Thirty-Year 6% Sinking Fund Collateral Trust Gold Bonds, Series B, Due February 1, 1957:

NOTICE is hereby given as provided in Article IV of the Trust Indenture of National Public Service Corporation to The New York Trust Company, Trustee, dated February 2, 1925, securing an issue of Thirty-Year 6½% Sinking Fund Collateral Trust Gold Bonds, Series A, due February 1, 1955, and Indenture, supplemental to said Trust Indenture, dated February 1, 1927, creating an issue of Thirty-Year 6% Sinking Fund Collateral Trust Gold Bonds, Series B, due February 1, 1957, that National Public Service Corporation has elected to redeem and pay off all of its said Bonds on April 1, 1928, which may be outstanding on said date, and on April 1, 1928, there will become and be due and payable upon each of said Bonds at the office of The New York Trust Company, Trustee, 100 Broadway, in the Borough of Manhattan, City and State of New York, the principal amount of said Bonds, together with accrued interest to April 1, 1928, plus a premium of five per cent. (5%) of the principal thereof. Interest on said Bonds will cease to accrue from and after April 1, 1928. The holders of all of said Bonds are hereby notified to surrender such Bonds for payment and redemption on or after April 1, 1928, at the principal office of The New York Trust Company, at 100 Broadway, New York City, together with coupons maturing on and after August 1, 1928. Bonds registered

as to principal should be accompanied by proper instruments of assignment and transfer in blank.

NATIONAL PUBLIC SERVICE CORPORATION,
By C. B. ZEIGLER,
Vice-President.

NOTE: National Public Service Corporation will purchase after the deposit with the Trustee of the money necessary to call said bonds and before April 1, 1928, any or all of said bonds (with August 1, 1928, and all subsequent coupons attached) presented for such purchase at the principal office of The New York Trust Company, at the call price and accrued interest to April 1, 1928, on a four per cent. (4%) bank discount basis figured to the date of redemption, namely, April 1, 1928. It is expected that such deposit will be made about March 12, 1928.

FORM 275

NOTICE OF BONDS DRAWN FOR REDEMPTION (ANOTHER FORM)

To the Holders of
NORTHERN STATES POWER COMPANY
6½% Gold Notes
Dated May 1, 1924—Due November 1, 1933.

NOTICE IS HEREBY GIVEN as provided in the Trust Agreement dated May 1, 1924 between Northern States Power Company and Guaranty Trust Company of New York, as Trustee, that One Hundred Forty-one Thousand Two Hundred Dollars ($141,200.) par value Northern States Power Company 6½% Gold Notes dated May 1, 1924, due November 1, 1933, issued under said Trust Agreement, bearing the following numbers, have been drawn by the Trustee for redemption for the Sinking Fund and will be paid on May 1, 1928, at 103% of their par value and accrued interest thereon to that date:

NOTES AT $1,000 PAR VALUE EACH

BM-33	568	849	1583	2195	2611	3044	3518	3907	4490
39	595	915	1610	2208	2623	3045	3526	3922	4509
212	632	1091	1636	2256	2624	3051	3626	4080	4514
239	633	1162	1904	2306	2799	3052	3675	4119	4569
332	643	1175	1905	2334	2819	3067	3699	4140	4578
336	654	1210	1912	2342	2835	3104	3711	4151	4588
342	666	1218	1940	2362	2907	3149	3712	4187	4635
344	683	1239	1967	2383	2916	3208	3747	4212	4637
406	688	1422	1992	2408	2927	3245	3810	4289	
436	729	1423	2038	2478	2929	3283	3811	4347	
515	730	1432	2039	2526	3030	3365	3812	4372	
520	731	1552	2092	2542	3032	3381	3868	4380	
527	827	1555	2093	2567	3037	3456	3869	4421	
561	848	1560	2106	2572	3038	3457	3904	4423	

NOTES AT $500 PAR VALUE EACH

BD-125	172	248	249	264	283	315	320	468	486	560	573

NOTES AT $100 PAR VALUE EACH

BC-6	37	46	69	114	121	148	197	227	247	340	341

Holders of the above notes should present them for payment on or after May 1, 1928, with the November 1, 1928, and subsequent coupons attached, at the Trust Department of Guaranty Trust Company of New York, 140 Broadway, New York.

On May 1, 1928, interest on the above notes will cease and coupons maturing after that date shall be null and void. Coupons payable May 1, 1928, should be detached and presented for payment in the usual manner.

NORTHERN STATES POWER COMPANY,
By—R. J. GRAF, Vice President.

On February 21, 1928, note called for redemption on May 1, 1927, bearing the following distinctive number was still unredeemed:

NOTE AT $500 PAR VALUE
BD 224

NORTHERN STATES POWER COMPANY,
By—R. J. GRAF, Vice President.

Dated, Chicago, Ill., February 28, 1928.

CORPORATE MANAGEMENT AND PROCEDURE

PART III

MANAGEMENT AND CONTROL

XVI

VALUATION AND APPRAISALS

The appraisal of capital assets has been resorted to in many instances where book values are no longer in line with real values. Real values are what is sold when property is transferred, lost when it is destroyed by fire or tornado, replaced when plant is scrapped and new plant erected, and considered when securities are issued, or credit sought in other ways. For this reason appraisals of commercial property have come into prominence during the last decade. Previously, these values were either ignored or left to rule-of-thumb methods, but the requirements of modern business have made necessary, in some instances, scientific appraisals. These appraisals have undergone important changes, perhaps the most notable being that from the "statistical" form, in which exactness of detail was emphasized, to the "engineering" type, in which attention is given to conditions and circumstances which were previously ignored.

1. Purposes of Appraisals

Among the purposes for which appraisals are made are the following:

Accounting. In appraisals for accounting purposes the primary consideration is to secure a figure representing unexpired cost of property units, hence current expirations of capital assets, in order to arrive at a profit figure which truly measures earning capacity and another figure which reflects the true financial status.

When liquidation is anticipated an appraisal is also necessary. Here the primary consideration is to arrive at a figure representing realizable value at forced sale of property

units in question. To do this a *statement of affairs* is used, setting forth:

1. Book values
2. Liquidation values of assets
3. Order of payment of liabilities

Fire Losses. In valuations for fire losses the primary object is to arrive at a figure representing the amount of the loss incurred by the concern through fire, with due consideration to replacement cost.

Sale of Property; Reorganization; Consolidation. Here the primary consideration is to arrive at a figure representing the amount which a new business (whether a reorganized old business, a new consolidation or an independent business) could afford to pay for the property unit in question, keeping in mind its cost, age, and remaining service life in comparison with the cost and service life of a new unit.

Credit Purposes. Here the primary consideration is to arrive at a figure which truly represents the resources available for meeting the obligations of the business when they fall due.

Depreciation Policy. Here the primary consideration is to arrive at a figure upon which to base an adequate policy of charging capital expiration to units of output produced.

Taxation. The modern theory of taxation is that contributions to the support of the government should be made on the basis of *ability to pay.* The primary consideration is to arrive at a figure which measures ability to pay to the support of government.

Capitalization. Here is sought a figure which will permit the application of a test to determine whether securities outstanding are backed up by real value (value to the corporation for operating purposes).

2. Bases of Valuation

A valuation base is a figure of fundamental importance as an aid in arriving at value. Because a figure is accepted

as a base does not mean that it is to be accepted, without qualification, as representing value; but it means that, in determining value, great weight is to be attached to it. Usually many factors are considered, the ultimate valuation determined upon being arrived at through a process of judgment. The valuation base or bases employed furnish some means of arriving at a scientific judgment concerning value. Some of the important bases are considered below.

3. Meaning of Value

By value ordinarily is meant what an article will sell for. This exchange value is in turn a reflection of earning power, and it follows that as so measured value is a fluctuating amount wherever earnings fluctuate. In case of monopolies, however, earnings are not an index of value since they are more or less arbitrarily determined.

In case of most problems arising in connection with capital assets, exchange value is not of much significance because capital assets are not ordinarily subject to sale except under conditions not applicable to going concerns. It is customary to regard the cost of capital assets as the chief factor in their valuation, the cost figure being adjusted for depreciation and, sometimes, for appreciation.

The starting point from which increments or decrements must arise, so far as capital assets are concerned, is the original investment. This, if properly managed, shows increased earnings; if improperly managed, decreased earnings. Increased earnings may make a plant salable at a figure greatly in excess of cost, hence lead to a desire on the owner's part to show on the books exchange value instead of cost. Such increased earnings may, however, be a reflection of good management rather than the result of an increase in the value of capital assets.

The prime consideration in case of the ordinary industrial enterprise is to secure favorable results measured in terms of original investment. For this reason accountants, in defining values, usually make it some kind of function of

original cost. There are exceptions to this rule, however, where the discrepancy between cost and present value as determined by the standard of earning power is so great as to make original cost no longer worth considering.

Accounting procedure takes into account current market fluctuations of inventories; and although these current fluctuations may be ignored in connection with capital assets it does not follow that all fluctuations affecting capital assets may be ignored. Also, fluctuations which could be ignored in so far as operations are concerned may necessitate consideration when capital assets are sold, taxes are determined, or fire losses are adjusted.

Values are constantly under consideration in determining depreciation policies to apply to capital assets, the purpose being, not to state exact value at a given date but to estimate expired cost applicable to each of the periods forming the asset's useful life.

For internal managerial purposes an enterprise may have no occasion to employ other than original cost figures. When, however, its balance sheet is handed to a banker to induce him to extend a line of credit, he may depart radically from this procedure. One contemplating buying the business might make equally radical departures.

4. Original Cost

By original cost ordinarily is meant original cost of existing assets. If accounting records were kept without error, book value would indicate actual cost; but usually book value is not a dependable guide. The discrepancy between actual cost and present value is sometimes so great that actual cost can have little or no influence on valuations. Nevertheless, most balance sheets of commercial enterprises show values at cost or as adjustments of costs. The chief evidence of cost is the invoice price of assets purchased, but in addition there usually enter other cost elements, usually intangible in nature.

When expenditures are made to cut production costs they

represent capital or revenue expenditures accordingly as they do or do not increase earning capacity.

During the construction period certain charges are properly capitalized which after operations are commenced represent expenses. Among these are repairs, interest on borrowed funds, taxes, insurance, legal expenses, supervision, engineering, and overhead.

Consideration of repairs, renewals and betterments enters into the application of the cost basis of valuation.

Repairs include all current expenses necessary to the upkeep of capital assets, but do not include important renewals.

Renewals are expenses incurred to replace important units of plant. Ordinarily, to constitute an expenditure a renewal the benefits derived must last two or three years at least.

When units of plant are replaced by improved units costing more than those replaced the excess of the cost of the new ones over the old ones is a betterment, hence a charge to capital. In practice arbitrary rules are adopted to treat such expenditures uniformly. Thus it may be advisable to charge all renewals of $5.00 or less to expense, whereas for those costing over $5.00 a division between renewals and betterments is attempted. The Chicago Traction System sets $200.00 as the minimum amount to be capitalized, all expenditures of less amount being charged to expense even though really betterments.

5. Reproduction Cost

Reproduction cost is the cost of reproducing a property on the basis of current prices. Sometimes prices are averaged over a period preceding the date of valuation—say five years. The plant is usually assumed to be reconstructed from materials and equipment the same in every respect as those actually used in constructing the plant. Sometimes, however, a substitute plant of equal capacity is assumed. Either present or original conditions may be assumed.

Usually it is regarded as fairest procedure to assume that the reproduction is made under conditions existing when the plant was constructed.

6. Reproduction Cost Less Depreciation

The depreciated condition of many plants makes it necessary, in applying the reproduction cost base, to make deductions therefrom for depreciation. Cost of reproduction simply tends to show what amount has been invested in a property. This may require adjustment for depreciation accrued to arrive at present value.

7. Market Value

Market value plays an important part in taxation valuations. In rate valuation it is often rejected because market value depends on rates. Market value disregards the amount invested.

8. Problems Involved

The problems involved in appraisals are chiefly (*a*) engineering and (*b*) accounting.

The engineer compiles the detailed inventory of the plant assets. This is next priced or valued. Here there exists great variation in method of procedure. However, the ordinary appraisal report sets out:

(*a*) Original cost
(*b*) Original cost less depreciation
(*c*) Reproduction cost
(*d*) Reproduction cost less depreciation

A specimen set-up is shown in Form 276, on the following page.

From the detailed schedules summaries are made, these being arranged to bring out desired information. To accomplish this the data are first summaried on detail sheets, usually by departments or buildings. A specimen sheet for a building is shown in Form 277, on the following page.

FORM 276

SPECIMEN VALUATION SET-UP

DETAIL OF SHOP EQUIPMENT

Department No. 1 — Building No. 18

Invoice No.	Description	Original Cost	Original Cost Less Depreciation	Reproduction Cost	Reproduction Cost Less Depreciation
			Original		Reproduction
25	1 Black Knife lathe 30..	$400.00	$300.00	$500.00	$375.00
28	1 Vertical belt sender....	100.00	80.00	120.00	95.00

FORM 277

SPECIMEN SUMMARY SHEET

SUMMARY OF BUILDING NO. 18

Classification	Original Cost	Original Cost less Depreciation	Reproduction Cost	Reproduction Cost less Depreciation
Buildings:				
Non-insurable portion				
Insurable portion				
Total Buildings				
Building Equipment:				
Heating equipment				
Electric lighting				
Fire protection				
Misc. piping				
Elevators				
Telephone system				
Total Building Equipment				
Shop Equipment: * * * * * *				
Totals				
Total Insurable Portion				

The final summary, usually appearing in the first page of the report, shows the values by units—land, buildings, equipment, and so on.

XVII

APPRAISALS OF REAL ESTATE

1. Importance of Real Estate

For one purpose or another valuations of real estate are being made continually. A large part of the nation's wealth is in the form of real estate. From two-thirds to four-fifths of all local and state revenues in the United States are based on real estate values. To a large extent such values constitute, directly or indirectly, an important element in the basis underlying federal income taxation and federal and state inheritance taxation.

2. Factors Determining Real Estate Values

There are some factors entering into the determination of real estate values which are so obvious that they require but little discussion here. Among these are location and topography. Under location proximity to markets needs emphasis. Transportation facilities are an important factor, as are civic improvements, hospitals, sewage systems, paved streets, water supply, schools, and telephone and telegraph facilities.

Among less obvious factors are interest, taxes, and general business conditions.

3. Effect of Interest Rate

Other things remaining equal, the higher the interest rate the lower are land values, because each increase in the interest rate reduces the relative profitableness of investments in land. Changes in the interest rate are not immediately apparent to landowners in increased or decreased land values because there are not enough sales in a given neighborhood

to bring out the changes, and because some land is leased for a considerable period of time, during which the owner receives a fixed rental which permits no material change in capitalized values.

Where rentals are fixed by contract for a long period, as 63, 84, or 99 years, value may be determined by capitalization at a certain rate. This plan serves as a useful check on results secured by appraisers. It is important that the proper rate be employed, however, since on a yearly rental of $8,000.00 a rate of 4% creates a value of $200,000.00, whereas a rate of 5% creates a value of $160,000.00.

The rate to employ should be based on the average interest rate secured on investments, and should be made to fluctuate with such average rate.

Where rents are stable and readily convertible, as in large cities, lower rates should be used than where less stable conditions are found. The rate of capitalization should be made to vary with the quality and stability of the property for the same reason that rates on bonds vary, government bonds yielding as low as 3½% and corporation bonds yielding from 4½% to 7%.

Rates of capitalization of urban rents may be:

1. 4% for highest class property.
2. 5% to 6% for second class property in the same city, or for first class property in smaller towns.
3. 7% to 10% for tenements in large cities.
4. 12% to 15% for property used temporarily, or for disreputable purposes.

In fixing upon a rate to use, local condition and local interest rates should be considered. The business cycle is a factor influencing interest rates, hence also property values. Location of the property is a factor. Thus in Cleveland down-town leases were capitalized at 6% in 1922, whereas leases of property in outlying districts were capitalized at 7%.

As to geographical location, rates for capitalization of rentals vary widely. In down-town sections of Boston 4%

applies. In Dallas, Houston, Oklahoma City, and cities in the southwest, 8% applies. In St. Louis, 5½%; in Chicago 5%; in Atlanta and Birmingham, 5½% to 6%; in St. Paul, Minneapolis, and northwestern cities, 6%.

This method of determining the value of a property by capitalizing its income, or conversely, of determining its rental by taking a percentage of a stated value, is based on the assumption that the income produced by it is not subject to material fluctuations. Were it otherwise, the method would be useless.

4. Effect of Taxes

An increase in taxes, other things being equal, reduces the value of real property, because taxation is equivalent to partial confiscation of values by the state. In New York City the state is a full one-third owner of the land because it receives, in taxes, one-third of the profits arising from the use of the land. By taxing land and refusing to tax improvements thereon the state is able to penalize speculators who fail to improve their land.

5. Effect of General Business Conditions

Investments in land are, in general, no more profitable than are other investments. There is a constant interaction among the various avenues in which money is invested, with the result that the return secured from an investment in real estate tends to average up with that which may be secured from other kinds of investment. Therefore the value of land depends upon general prosperity to a material degree.

6. Practical Basis of Valuation

In practice, it is customary to fix upon some feasible plan of arriving at the value which is based upon the principles explained above. Below certain of these plans are explained.

7. Pedestrian Counts

Recently, appraisals of properties situated in shopping centers have been made on the basis of the number of pedestrians passing during a given period. Some chain stores have found this method useful. The procedure involved is explained by the Cleveland Association of Building Owners and Managers as follows:

Present and future property values in the retail district depend largely upon the average rent paying capacity of the ground floor store room merchant. His ability in this direction is in proportion to his sales volume.

In a general way, through the medium of proper merchandise display, the volume possibilities of the merchant are in proportion to the sidewalk pedestrian traffic, although the traffic yield varies on different streets, dependent upon the purchasing power of the individual and the average number of merchandise buyers passing at a given point. In a growing city, it is sometimes difficult for the owner or manager of a property to realize that his ground floor space has increased in value, due to traffic increase, until after he has entered into some unfavorable lease with a tenant.

Several years ago, it became apparent that if a sidewalk traffic count could be taken simultaneously at certain fixed stations, throughout the down-town district, the relations between volume of traffic and current ground floor rentals could be ascertained; and that, if traffic counts were subsequently taken at these stations regularly and under conditions which would reasonably insure a fair average, comparisons could be made with previous counts and the trend analyzed. Stations for counting the sidewalk traffic were established throughout the down-town district, at points which are not affected by corner, arcade or alley influences. A careful study of the rise and fall in the total yearly sales volume of certain principal stores determined the times when conditions would most nearly insure the taking of average counts. The weekly cycle of volume disclosed the fact that an average of Wednesday and Friday would fairly represent the daily volume for the week, with the result that the second Wednesday and Friday of June and the first Wednesday and Friday of November were selected. In order to eliminate the diluting influence of the morning, noon and night rush, it was determined that the count should be made between the hours of 9:30 and 11:30 in the morning and between 2 to 4 in the afternoon, making a four-hour count.

Because the average woman is the family purchasing agent and

her value in the traffic is therefore greater, the percentage of women in the traffic on the principal retail streets is now a part of the record. The predominance or men or women in the traffic should be given consideration in selecting ground floor tenants. In fact, comprehensive knowledge of pedestrian traffic, its make-up and trend is essential in order that the retail space in a building may be advantageously leased to tenants who will derive maximum yield from the traffic and who will therefore be of the greatest constructive value to the property.

EUCLID AVE., AT PUBLIC SQUARE, SOUTH SIDE
(STATION NO. 14)

Year	Total Count
1916	25,659
1917	24,402
1918	20,552
1919	24,263
1920	Omission
1921	28,026
1922	30,377

EUCLID AVE., JUST EAST OF E. 9TH ST., SOUTH SIDE
(STATION NO. 23)

Year	Total Count
1916	8,618
1917	9,542
1918	9,089
1919	10,445
1920	9,549
1921	12,782
1922	14,067

EUCLID AVE., BETWEEN E. 12TH AND 13TH STS., NORTH SIDE
(STATION NO. 24)

Year	Total Count
1916	6,226
1917	6,509
1918	7,011
1919	8,243
1920	9,307
1921	9,216
1922	11,047

To be of greatest value such counts must be carefully analyzed and interpreted with a view to existing conditions. Quality of the count must be considered as well as quantity. What may be good for the cheap trade may not be good for the more expensive lines. Heavy night counts are of little use to stores open only during business hours.

8. Net Income As Valuation Base

Net income is sometimes used as a basis in making real estate appraisals. One objection to this plan is the tendency of net income to vary from year to year. Potential as well as present rents must be considered. To secure satisfactory results there should be exact standards of depreciation rates, repair costs, management, and so on, none of which are as yet in existence.

In England real estate is assessed on an income basis, the figure being determined by estimating what the rental might reasonably be expected to be year after year "after deducting therefrom the *probable* average annual cost of repairs, insurance and other expenses necessary to maintain them in a state to command such rent." To cover cost of repairs a scale of deductions is fixed by law, and in practice the maximum allowance permitted by law is usually granted. For repairs, insurance, etc., this maximum allowance is fixed at 16 2/3% of the gross rental that an imaginary tenant would pay. In practice considerable difficulty is encountered in the administration of these provisions.

One chief objection to the use of this plan for tax purposes is the impossibility of giving the necessary attention to each property being assessed. For certain other purposes, however, this is not true; and it should be used where feasible. Appraisers sometimes apply the rule that a month's rental is 1% of the value of the property. Thus a monthly rental of $100.00 indicates a value of $10,000.00. This rule is based on the theory that 12% per year on the investment is enough to preserve the investment and give the owner a fair rate of profit. The rule has been revised to fit present

conditions by stating that a month's rental should be 1¼% of the value of the property. The gross annual allowance of 15% thus required is comprised of the following factors:

2.3 %	for taxes
1.7 %	for management
2.0 %	for depreciation
2.0 %	for maintenance
7.0 %	for interest
15.0 %	Gross annual allowance
1.25%	Gross monthly allowance

Benson and North, in *Real Estate Principles and Practice*, give the following table of percentages of gross rentals to values:

PER CENT GROSS RENTS TO VALUES

	Yearly	Monthly
Dwellings	12%	1%
Cold water flats	12% to 15%	1% to 1 1/4 %
Steam-heated flats	15% to 20%	1 1/4% to 1 2/3 %
Elevator apartments	18% to 25%	1 1/2% to 2 1/12%
Loft buildings	15% to 20%	1 1/4% to 1 2/3 %
Office buildings	20% to 25%	1 2/3% to 2 1/12%

Concerning office buildings the National Association of Building Owners and Managers has collected much data. Its 1921 Experience Exchange shows that the gross income of 150 buildings was 19.51% of the tax value. Stated in percentage of tax values, the component items are as follows:

OFFICE BUILDING COSTS

	% of tax value	
Cleaning	2.23	
Electrical system	.35	
Heating and ventilating	1.14	
Plumbing	.14	
Elevators	1.16	
General expense	1.18	
Total	6.20	— 6.20
Alterations	.24	

Buildings repairs	.37	
Decorating	.25	
Total	.86	— .86
Insurance	.25	
Property taxes	3.08	
Depreciation	1.73	
Total	5.06	— 5.60
Net income	7.39	— 7.39
Total rental income		19.51

In interpreting these figures it should be remembered that the percentages are based on tax values. These are perhaps 75% of the cost to the owners. It should also be borne in mind that of the total valuation approximately 44% represents land values and 56% building values. The following table shows the figures given above adjusted to true value and to value of building only:

	Per Cent of Tax Value	Per Cent of True Value	Per Cent of Building Tax Value
			56%
Operation and construction	7.06	5.31	9.48
Insurance	.25	.19	.34
Taxes	3.08	2.31	2.31
Depreciation	1.73	1.30	2.32
Deduction and net income	7.39	5.65	5.65
Gross income	19.51	14.76	20.10

9. Sales of Neighboring Property As Valuation Base

Sales of property in the immediate neighborhood of the property whose value it is desired to ascertain are a valuable source of information. This method is most effective in districts where land values are relatively stable. In case speculative conditions are present the appraiser must take into consideration relative changes in land values and the factors which bring these changes about.

Scattered sales such as might occur as the result of discouragement of a few owners do not serve as a safe criterion

for judging values; neither do sales of land made at excessive prices because of special interest which the buyer has in it.

Sales require careful investigation before being made the basis of a valuation. Each sale should receive individual attention. If the market is active, sales occurring over a period of not less than a year should be investigated; but where values are relatively stable and sales not abnormally numerous, investigation of a shorter period may suffice. If sales are infrequent the investigation should cover a period of two or more years.

The purpose for which the land is used is a factor. If for business, it is usually sufficient to consider transfers on the same street within, say, four or five hundred feet. In case of corner properties departure should be made from this rule. It is then advisable to compare them with other corners similarly located.

Where long-term leases exist they are sometimes found to have been made on the basis of land values as much as 15% above present values; so that allowance must be made for this difference. Any attempt to make use of leases for valuation purposes must be conditioned upon an examination of the terms of the leases, due allowance being made for any restrictions or special conditions.

Properties used for manufacturing purposes are affected by conditions of surrounding territory lying at a much greater distance than is true of business properties. Transportation facilities and labor supply are of first importance.

The appraiser must be relied upon to correlate the data and draw therefrom a conclusion such as can be derived only by exercise of a seasoned judgment.

10. Valuation of Composite Plant

When it is desired to ascertain a theoretical valuation of a plant as a whole, the depreciation must be figured on the various units of which the plant is composed. Thus, if a plant is composed of the following units having life and wearing value (cost less salvage) as shown below:

Unit	Life	Wearing Value	Yearly Charge
Building	50	$40,000.00	$ 191.20
Engine	25	25,000.00	523.81
Boiler	20	10,000.00	302.43
Dynamo	15	5,000.00	231.71
	..	$80,000.00	$1,249.15

Then the yearly annual charge, on a 5% basis, is as shown in the last column. The rate of depreciation is the ratio of the yearly charge to the total wearing value, or $1,249.15 \div 80,000 = 1.5614\%$. This is low here because over long periods the interest item is a large factor.

The time required for the yearly additions to the depreciation fund to accumulate to the original wearing value of the plant is known as the composite life of the plant.

In the example above, $1,249.15 a year must accumulate a wearing value of $80,000. That is:

$$1,249.15 \times \frac{1.05^n - 1}{.05} = \$80,000.00$$

Dividing both sides by 80,000, we have:

$$\frac{1,249.15}{80,000.00} \times \frac{1.05^n - 1}{.05} = 1$$

But, $1,249.15 \div 80,000$ is d, the depreciation rate. We have, therefore,

$$d \times \frac{1.05^n - 1}{.05} = 1$$

$$\text{or, } 1.05^n - 1 = \frac{.05}{d}$$

Transposing 1 to right,

$$1.05^n = 1 + \frac{.05}{d}$$

Applying logs to both sides,

$$n \text{ log. } 1.05 = \log\left(1 + \frac{.05}{d}\right)$$

$$\text{or} \qquad n = \frac{\log\left(1 + \frac{.05}{d}\right)}{\text{log. } 1.05}$$

RULE:—To find the composite life, divide i by the rate of depreciation, add 1 and find the log; divide by the log of $(1 + i)$.

For the above problem $\frac{i}{d} = 3.202$

add 1 and find log. .62346

log. of 1 + .05 or 1.05 = .02119

.62346 ÷ .02119 = 29.4 years

The composite life of a plant should be known when bonds secured by a mortgage on plant and equipment are issued. Such bonds should not be issued for a term of years which exceeds the composite life of the plant. To provide a margin of safety the term of the bonds should be considerably shorter than the plant's composite life.

11. Capitalization of Assets

It is sometimes desirable to find what sum of money is necessary to construct a building and keep it in repair for its estimated life. The cost of a perpetuity of 1 per annum is $\frac{1}{i}$—and the income from a sinking fund is—$\frac{1}{Sn}$, where Sn is the amount of an ordinary annuity. The product of these is the cost of a series of yearly items representing upkeep and repairs.

12. Capitalization of Assets Illustrated

What amount must be given to a hospital to enable it to construct a building having an original cost of $100,000.00,

an estimated life of 60 years, and an estimated annual upkeep cost of $10,000.00 and enable the hospital to have on hand at the end of 60 years $100,000.00 to replace the building? Money returns 4%.

First cost	$100,000.00
Renewals $100{,}000 \times \frac{1}{.04} \times .00424432 =$	10,610.80
Upkeep $\frac{10{,}000}{.04}$ ..... =	250,000.00
Answer.....	$360,618.80

The formula for the above is developed as follows:

Let $C\theta$ = the capitalized cost of the asset.
C = cost of building new.
n = life in years.
R = annual repair charge.
i = interest rate.
$\frac{R}{i}$ = annual repair charge capitalized.
$\frac{C}{1} \times \frac{1}{Sn}$ = renewal charges capitalized.

$$C\theta = C + \frac{C}{i} \times \frac{1}{Sn} + \frac{R}{i}$$

In the above illustration,

$$= 100{,}000 + \frac{100{,}000}{.04} \times .00424432 + \frac{10{,}000}{.04}$$

13. Comments on Specific Assets

Following are suggestions relative to the treatment of specific assets. Necessarily any attempt to so treat the individual items comprising capital assets must be fragmentary in content. The following remarks are made from the point of view of a going commercial enterprise:

(*a*) *Equipment.* Equipment consists of certain forms

of personal property, and is thus distinguished from real property in form of land and buildings. This distinction is important when it is necessary to ascertain what assets are pledged as security under a real estate mortgage. Following are considered some important classes of equipment.

(*b*) *Machinery and Tools.* For ordinary purposes machinery and tools should be valued at cost less depreciation. If detailed plant records are kept the accuracy and ease with which these assets may be treated is increased. It may be desirable to subdivide machinery into classes based on estimated life. Tools are comparatively short lived, hence are sometimes handled by the inventory method. In any event they should be distinguished from machinery.

Machine tools, however, should be regarded as parts of the machine in connection with which used, even though of shorter life than the machine.

It may be advisable to keep a separate machinery ledger where investment in machinery is large.

The capitalized cost of machinery should be made to include freight, drayage, insurance during transit, and installation costs, as well as the invoice price.

In case machinery is rearranged, the cost of doing this may be capitalized if the rearrangement results in increased earnings. Usually, however, it is conservative to regard such costs as revenue charges.

(*c*) *Furniture and Fixtures.* Cost less depreciation is the usual basis of valuation for going concerns. Sometimes, however, the inventory method may be found preferable.

(*d*) *Delivery Equipment.* Cost less depreciation or the inventory method should be followed, according to the circumstances.

Horses depreciate at greatly varying rates, according to conditions.

Automobiles should be valued at cost less depreciation. A separate record for them may be kept if many are owned.

(*e*) *Containers.* These include barrels, boxes, baskets, and so on. The depreciation rate on these is high, varying

from 15% to 25%. To protect the investment in containers customers may be charged with their cost when deliveries are made, the amount thus charged being returned when the customer surrenders the container.

(*f*) *Patterns.* Preferably, these are charged to the special job for which they are made. This procedure should be departed from only where products are so standardized as to permit of their constant use. In any case the rate of depreciation is high.

(*g*) *Land.* Land does not depreciate, as a rule. Whether desirable to treat a given tract of land as one whole or to regard it as a collection of parcels each to be treated as a unit, depends on circumstances.

Among the items which enter into capitalized cost of land are: purchase price, commission paid the purchasing agent, costs of title search and guaranty, notarial and recording fees, accrued taxes at date of purchase, and assessments for local improvements.

In addition to original cost, the following improvement costs may be capitalized: drawing, filling, leveling, and grading.

XVIII

APPRAISALS OF WASTING ASSETS

1. Wasting Assets Defined

Wasting assets comprise natural resources such as mineral deposits and timber lands. Such resources are gradually exhausted when used to promote industry and commerce. They are thus differentiated from other forms of capital assets, such as buildings and machinery, which are renewed or replaced as occasion demands. Their use results in their diminution and ultimate exhaustion.

2. Depletion

The expense resulting from exhaustion of natural resources is termed depletion. Previous to the passage of the income tax laws little attention was given to the matter of ascertaining a fair charge for depletion because of the lack of necessity for making a careful distinction between capital and revenue Ordinarily, on the books of concerns engaged in exploiting natura' resources, no charge was made for depletion.

3. Development of Theory of Depletion

Until the advent of income tax laws authoritative expositions of depletion held that the allowance should be based on original cost, the only effect of new discoveries being to diminish depletion allowable per unit of output. Accountants long held this to be the correct interpretation. The application of this theory necessitates frequent revision of the depletion allowance per unit of output where discoveries are frequent.

The income tax caused these views to be revised. It emphasized the *expense* aspect of depletion and substituted for original cost as the amount to be depleted the *intrinsic value* of the deposit in the mine, whether or not all is known to exist from the beginning.

The intrinsic value of the deposit or mine content is the product of:

1. The total content in tons as finally ascertained, and
2. The unit price per ton, representing the value in place, en bloc, in the mine, of the proved, probable and prospective ore.

This makes the depletion charge for each accounting period equal the tonnage of ores extracted multiplied by the rate per ton established by the original estimate of value of ores in place, en bloc, in the mine.

The rate per ton changes only if subsequent discoveries are made of relatively large ore bodies of a grade widely different from those upon which the original estimates were based.

This theory necessitates occasional adjustment of book values of natural resources to keep them in agreement with changes resulting from discoveries. When such adjustments are made a special capital surplus account is credited.

4. Methods of Appraisal Adopted by U. S. Treasury

Regulations governing the valuation of deposits for income tax purposes promulgated by the U. S. Treasury were last revised as of December 29, 1920. The chief requirement is that valuation as of a specified date be made "in the light of conditions and circumstances known at that date, regardless of later discoveries or developments in the property or subsequent improvements in methods of extraction and treatment of the mineral product."

The value should be what would be established as the result of a bona fide transfer between a willing buyer and a willing seller. All pertinent data may be considered by the

Treasury Department to ascertain whether valuations are fairly made.

In all cases except where cost serves as a basis for determining depletion charges, the Treasury Department requires the basis to be fair market value as of a "basic date," i.e., March 1, 1913, and in case of property acquired before that date; date of discovery, or within thirty days thereafter, in case of property discovered after March 1, 1913.

Following the practice of mining engineers, the Treasury Department has adopted the present value method of valuation; but the Commissioner of Internal Revenue considers all evidence which throws light on market value, as, cost, actual sales and transfers of similar properties, market value of stocks or shares, royalties and rentals, value fixed by owner for capital stock tax purposes, valuation for local or state taxation, partnership accountings, records of litigation in which the property was in question, the amount at which the property may have been inventoried in probate court, and disinterested appraisals made in accordance with approved methods. As a consequence the value finally secured is the resultant of the consideration of many factors and the application of a seasoned judgment.

5. Present Value Method

Under the present value method the following principles are recognized:

1. Increase in mine values is not unearned increment since further development merely develops what already existed; it does not add value in the sense that value of real estate is enhanced by community development and improved methods of transportation.
2. Exhaustible capital values must be recognized.
3. An allowance must be made not only for return of cost but also for replacement of exhausted mineral.
4. Mining is a continuing industry, organizations built up to engage in successful exploitation of mines being of too great value to be permitted to be discontinued by exhaustion of any property.

6. Factors to be Presented

To determine fair market value of a property by the present value method the following information must be determined for each deposit:

1. Total quantity of mineral in terms of the principal or customary unit (or units) paid for in the product marketed.
2. Average quality or grade of mineral reserves.
3. Expected percentage of extraction or recovery in each process or operation necessary for preparing the crude mineral for market.
4. Probable operating life of the deposit.
5. Unit operating cost, i.e., cost of production exclusive of depreciation and depletion.
6. Rate of interest commensurate with the risk for the deposit.

In case of well developed properties much of this information can be secured from past operating experience, allowance being made for probable future variations in rate of exhaustion, quality of mineral, percentage of recovery, and costs of production and selling. If operating experience is lacking, much information may be deducted from concurrent evidence. Deposits of different grades, locations, and probable dates of extraction should be valued separately.

7. Finding Present Market Value

Present market value is determined by:

1. Finding total expected operating profit, secured by multiplying the number of units of mineral recoverable in marketable form by the difference between selling price and operating cost per unit.
2. Reducing total expected operating profit for each mineral deposit to present value as of the basic date (March 1, 1913, or a later date) at the rate of interest commensurate with the risk involved. This value should be reduced by the value, as of the basic date, of depreciable assets and prospective capital additions essential to the process of realizing such profits.

8. Segregation of Minerals

Minerals which cannot be mined before a definite future period in time are classed separately. Those which cannot

be extracted within, say, forty years, are of two kinds: (1) known reserves, and (2) unknown deposits subject to future discovery. For known minerals which cannot be worked within forty years little is paid, because the discounted value of a dollar due in forty years is a small amount. Depletion per unit of output should be based on the amount which can be extracted, say, within forty years; for if additional quantities were included the depletion per unit would be too small. If minerals which cannot be mined within a reasonable time are included in determining the depletion charge, the inequality resulting from distributing the depletion deduction equally over all units to be extracted becomes great.

All minerals not to be extracted within a reasonable time should be segregated as an investment not subject to depletion. When such reserves are ultimately worked there will be no deduction for depletion except in case of new discoveries, or in case of a valid transfer, because the total investment will have been returned before the reserves are exploited.

9. Value at Given Date

Value as at a given date for depletion purposes is:

The amount secured by discounting, at compound interest, to that date, the total net profits year by year, less

The discounted value, at the basic date, of the depreciable assets and capital additions thereto necessary to realize such profits.

The amount thus secured, when applied to the estimated available tonnage for depletion purposes, will have returned the value of the property when the estimated tonnage is exhausted.

10. Rate of Interest

Disagreement exists as to the rate of interest to be used for discount purposes. The problem involves difficulties, such as the element of risk involved and changing rates of interest over periods of many years' duration. R. V. Norris,

a mining engineer, considers 6% the proper rate in most cases, since it is a standard legal rate. He suggests the use of a higher rate where there is question as to the extent or continuity of the deposit.

The Mines Taxation Committee of the American Institute of Mining and Metallurgical Engineers suggests 4%. The Treasury Department uses 6% for anthracite mines and 8% for bituminous mines. C. E. Grunsky says the rate should vary with the risk. This in turn varies with the stage of development of the mine and with different mines.

11. Depletion of Gas and Oil Properties

The Treasury Department regulations require that an estimate be made of recoverable oil in the territory in question as of the date of purchase, or as of March 1, 1913, if acquired prior to that date, or within thirty days after discovery, but do not prescribe methods of estimating recoverable reserves. Methods of doing this applicable to a wide variety of conditions are described in Part III, *Manual for the Oil and Gas Industry*. These are based on the principle that the "best indication of the future production of any well is to be found in the history of similar wells in the same or similar districts, and that other things being equal, a well's production is more likely to approximate the production of a similar well in the tract or district than to deviate widely from the average." These methods are summarized thus:

1. Plotting the record of production of individual wells, or, lacking such detailed information, the average production per well for each tract.
2. Deriving from these graphical records an average or composite production decline curve for the district.
3. Estimating from the last year's average production per well the probable future production, based on the average production decline curve, or a future production curve derived from the production decline curve.
4. Ascertaining probable total future production of producing wells by multiplying average future production per well by the number of wells producing at end of the year.

12. Depletion of Timber Land

In general, but with exceptions due to the nature of the lumber industry, the principles discussed above apply to timber. In case of timber acquired after February 28, 1913, the basis is cost, no provision being made for valuations at other than cost for discoveries. For depletion purposes cost of timber does not include cost of land.

Unit value for depletion purposes in case of timber acquired before March 1, 1913, is determined by dividing fair market value as of March 1, 1913, by total number of units on hand in the given account at the beginning of the year plus the number of units acquired during the year plus (or minus) the number of units which must be added (or deducted) to correct the estimate of the number of units remaining available in the account. In case of timber acquired after March 1, 1913, the dividend is cost of timber on hand at the beginning of the year, plus additions to capital necessary to put the property on a producing basis.

The depletion allowance in a given year is the product of the unit value thus obtained multiplied by the number of units of timber cut during that year. Theoretically, depletion occurs at time of felling the timber; practically it is determined when the quantity is first definitely ascertained.

Fair market value as of March 1, 1913, when once determined and approved, cannot be changed during a given ownership. The unit market value or the unit cost may be changed, however, if owing to such changes as those mentioned above the cost of fair market value as of March 1, 1913, will not be extinguished with the exhaustion of the timber.

In case of improvements the cost or value thereof may be written off at a rate corresponding to the current exhaustion of stumpage, or it may be written off in accordance with the usual rules for depreciation, or, finally, according to some plan based on the taxpayer's peculiar circumstances, if approved by the Commissioner; but the cost or value must

not be extinguished before the useful life of the plant is ended.

13. Appraisal Formulae

One method of valuing permanent assets is to divide the annual income by the rate of income which the property in question is expected to produce on the desired valuation. Thus if,

a = the value to be ascertained
b = the average net income produced yearly
c = the rate of return consistent with risk involved

Then

$$a = \frac{b}{c}$$

When, as in case of mineral deposits, the asset possesses limited life, provision must be made for the return of the investment. This takes the form of a sinking fund payment, which may be regarded as an additional rate to be added to c, and will be expressed as d. The formula now becomes:

$$a = \frac{b}{\frac{1}{Sn}\ (\text{at rate } d) + c}$$

This may be stated as a rule:

To find the value of a mine, divide the annual net profits by the sum of the sinking fund charge at rate of interest d, plus the rate of return commensurate with the risk, c.

NOTE—The sinking fund charge represented by $\frac{1}{Sn}$ is based on the fact that an ordinary annuity of 1 for n periods is represented by the symbol Sn. The sinking fund charge is found by dividing 1 by such ordinary annuity.

To illustrate, assume that a mine will produce a net income of $25,000.00 a year for 40 years. What is its value if a

return of 7% on the investment is regarded as reasonable in view of the risks involved, and if the sinking fund for amortization of the investment is to accumulate at 4%, interest compounded annually?

$$\frac{1}{Sn}, \text{ 40 years at } 4\% = .01052349$$

$$i = .07$$

$$a = \frac{25{,}000}{.01052349 + .07} = \$310{,}468.41$$

Proof:

Total income from mine is	$1,000,000.00
Less—7% for 40 years on investment of $310,468.41	869,311.55
Balance of income, being theoretical contribution to sinking fund	$ 130,688.45
Which per year is	3,267.21
Annuity of $1.00 for 4 years at 4% is	95.0255157
3,267.21 × 95.0255157 =	$ 310,468.43

14. Hoskold's Formula

Hoskold's formula, a slight modification of the above, is extensively used to find the present value of both tangible and intangible income—producing properties having limited life.

Assume that:

a = the value to be ascertained.

b = *total net income* property will produce during its life.

c = rate of return, based on a, representing a fair annual return for "risk," i.e., business profit. This may vary from 6 to 50 per cent, or higher.

d = rate of return, compounded annually, on a sinking fund theoretically set up after allowing the fair return represented by c. 4 per cent is the rate usually adopted.

n = number of years or periods during which earnings are made.

Then:

$$a = \frac{b}{n\ (c + \frac{d}{(1+d)^n - 1})}$$

If I be assumed to represent the total compound interest accruing in the sinking fund over n years, the formula becomes:

$$a = \frac{d}{n\ (c + \frac{d}{I})}$$

Since $\frac{d}{I}$ is the equivalent of the formula used in determining sinking fund instalments, computations are facilitated by the use of compound interest tables.

15. Illustration

A mine will produce a net annual return of $1,000.00 for 3 years. What is its present fair value if the owner is entitled to a business profit of 15% on the investment, plus a return which, compounded yearly at 4%, will return the investment at the end of 3 years?

$$a = \frac{3{,}000}{3\ (.15 + \frac{.04}{1.04^3 - 1})} = \frac{3{,}000}{3\ (.15 + \frac{.04}{.124864}}$$

$$= \frac{3{,}000 \times .124864}{.0561888 + .12} = \frac{374.592}{.1761888} = \$2{,}126.08$$

Proof:

Total income produced	$3,000.00
Less 15% on investment for 3 years	956.74
Balance, being theoretical contribution to sinking fund	$2,043.26

Which per year is..... 681.09
Annuity of $1.00 for 3 years at 4% is..... 3.1216
681.09 × 3.1216 ..... 2,126.09

16. Hoskold's Table

The present values of $1.00 in accumulated earnings of equal annual instalments over a period of years ranging from 1 to 50, inclusive, on the basis of rates of interest return varying from 6% to 12%, inclusive, on the investment, with return of capital at 4%, are as follows:

Yrs.	6%	7%	8%	9%	10%	11%	12%
1	0.943396	0.934597	0.925925	0.917431	0.909090	0.900910	0.892857
2	0.908766	0.892946	0.876891	0.861777	0.847176	0.833061	0.819408
3	0.876389	0.853037	0.832607	0.812317	0.792993	0.774587	0.756976
4	0.846052	0.818370	0.792418	0.768072	0.745178	0.723608	0.703254
5	0.817570	0.785469	0.755780	0.728260	0.702675	0.678824	0.656540
6	0.790781	0.754961	0.722245	0.692177	0.664641	0.639166	0.615547
7	0.765540	0.726638	0.691435	0.659519	0.630410	0.603769	0.579284
8	0.741717	0.700174	0.663032	0.629635	0.599440	0.572008	0.546979
9	0.719198	0.675487	0.636765	0.602251	0.571286	0.543347	0.518017
10	0.697880	0.652354	0.612404	0.577066	0.545581	0.517355	0.491906
11	0.677672	0.630699	0.589748	0.553820	0.522019	0.493671	0.468244
12	0.658489	0.610277	0.568624	0.532281	0.500344	0.472001	0.446702
13	0.640258	0.591066	0.648887	0.512330	0.480337	0.452107	0.427009
14	0.622911	0.572950	0.530401	0.493737	0.461815	0.433770	0.408936
15	0.606385	0.555828	0.513053	0.476390	0.444619	0.416821	0.392292
16	0.509625	0.539630	0.496741	0.460167	0.428610	0.401104	0.376914
17	0.575581	0.524283	0.481376	0.444963	0.413671	0.386493	0.362663
18	0.561206	0.509716	0.466880	0.430685	0.399699	0.372873	0.349420
19	0.547455	0.496371	0.453178	0.417253	0.386603	0.360147	0.337082
20	0.534292	0.482719	0.440211	0.404592	0.374302	0.348230	0.325559
21	0.521680	0.470171	0.426920	0.392637	0.362729		
22	0.609587	0.458216	0.416255	0.381334	0.351818		
23	0.497979	0.446805	0.405166	0.370630	0.341517		
24	0.486835	0.435903	0.394619	0.360479	0.331775		
25	0.476122	0.425477	0.384571	0.350840	0.322549		
26	0.465820	0.415496	0.374988	0.341675	0.313799		
27	0.455905	0.405935	0.365839	0.332951	0.305488		
28	0.446356	0.396767	0.357096	0.324637	0.297587		
29	0.437155	0.387970	0.348743	0.316704	0.290063		
30	0.428283	0.379520	0.340726	0.309127	0.282893		
31	0.419724	0.371399	0.333054				
32	0.411462	0.363589	0.325695				
33	0.403483	0.356072	0.318631				
34	0.395772	0.348832	0.311846				
35	0.388318	0.341856	0.305324				
36	0.381108	0.335128	0.299049				
37	0.374130	0.328637	0.293009				
38	0.367375	0.322371	0.287190				
39	0.360832	0.316318	0.281581				
40	0.354491	0.310468	0.276171				
41	0.348345	0.304811	0.270950				
42	0.342385	0.299339	0.265909				
43	0.336602	0.294043	0.261038				
44	0.330990	0.288913	0.256328				
45	0.325540	0.283945	0.251774				
46	0.320248	0.279128	0.247367				
47	0.315107	0.274459	0.243100				
48	0.310109	0.269929	0.238967				
49	0.305250	0.265533	0.234962				
50	0.300525	0.261266	0.231079				

17. Application of Hoskold's Table

Following is a simple computation for value of a property.

Ore reserves	1,000,000 tons
(This includes developed ore as well as reasonable amount of probable ore such as would be taken into account by a prospective buyer.)	
Estimated operating profit per ton	$2
Total estimated operating profit	$2,000,000
Estimated life based on operating history and conditions	10 years
Risk rate considered commensurate with the hazard of the operation of this particular property	10% and 4%
Factor from Hoskold's table	0.545581
Present worth of operating profits	$1,091,162
Value of plant and equipment plus the present worth of necessary capital additions through the life of the property to exhaust the mineral and obtain the estimated operating profit	$200,000
Value of mineral en bloc	$891,162

XIX

ACCOUNTING FOR APPRAISALS

1. Accounting Procedure

The propriety of reflecting increased property valuations on the books has often been questioned, but most authorities now agree that to do so is proper provided that it is done with certain qualifications, so that stockholders and investors cannot be deceived as to the facts. This means that the credit should be carried to a division of capital surplus, viz., that arising from revaluation of capital assets.

If the management prefers, the revaluation may be expressed merely as a footnote to the balance sheet, in which case no change is made on the books of account. An equivalent plan is to show the revaluation figure parenthetically in the balance sheet.

If the ledger accounts are changed to reflect the altered values, adjustment of the depreciation reserve may be necessary. If too much depreciation has been written off in the past, the depreciation reserve should be charged and surplus credited. If the appraisal results in an increased valuation, ordinarily this should be reflected on the books by a charge to some capital asset account and a credit to an adjustment reserve account. If the capital asset account charged is the account of the asset which is revalued, the increased valuation will result in increased depreciation charges in the future. How the increase in the depreciation charge shall be treated depends on the theory held regarding the purpose of depreciation reserves.

If it is held that the purpose of the reserve is to provide for the replacement of the asset, the increased depreciation charge should be treated the same as the depreciation charge

previously employed. Ultimately, under this plan, the reserve of capital surplus established at the time the books are adjusted becomes realized and should be so designated.

2. Illustration—Excessive Depreciation Charges

Assume that a lathe which cost $1,000.00 has been depreciated $500.00, the reserve for depreciation now standing at that amount. An appraisal indicates that its actual present value is $750.00. The adjusting entry is:

Depreciation Reserve	$250.00	
To Surplus		$250.00
To restore to surplus excess amount set up as depreciation reserve.		

3. Illustration—Excess Value Due to Appreciation: Replacement Cost Provided for by Reserve

Assume that a building which cost $10,000.00 has been depreciated $2,000.00, thus showing a book value of $8,000.00. An appraisal indicates that its actual present value is $12,000.00, or $4,000.00 in excess of the value shown on the books. Cost to reproduce new would be $15,000.00. The adjusting entry is:

Building	$5,000.00	
To Depreciation Reserve		$1,000.00
Capital Surplus		4,000.00
To take up appreciation and adjust depreciation reserve to basis of appraisal.		

A year later the following entries are required:

Depreciation Expense	$750.00	
To Depreciation Reserve		$750.00
To provide depreciation on building at 5%.		
Capital Surplus	250.00	
To Earned Surplus		250.00
To carry realized appreciation to surplus account.		

The depreciation provision needed to retire the cost of the building at end of its estimated life of 20 years is $500.00 annually. Since the asset account is charged at $15,000.00 after the adjustment is made to give effect to the appraisal, the depreciation provision determined by applying the 5% rate to the appraised value new ($15,000.00) is $750.00. Of this amount $500.00 applies to original cost ($10,000.00) and $250.00 to the appreciated value. This amount is earned surplus, being transferred to that account by a charge to capital surplus account and a credit to earned surplus.

4. Illustration—Excess Value Due to Appreciation: Original Cost Provided for by Charge to Depreciation Expense

Assume data to be same as in preceding illustration. The adjusting entry is:

Building	$5,000.00	
To Depreciation Reserve		$1,000.00
Capital Surplus		4,000.00
To take up appreciation and adjust depreciation reserve to basis of appraisal.		

A year later the following entry is required:

Depreciation Expense	$500.00	
Capital Surplus	250.00	
To Depreciation Reserve		$750.00
To set up reserve on basis of appraised values.		

Under this plan only the original cost is ultimately charged to profit and loss as expense, the excess due to the increased book value being charged to capital surplus. At the expiration of the building's life the reserve is sufficient to write off the written-up book value of the building.

5. Appraisals for Insurance Purposes

The standard fire insurance policy provides, "This company shall not be liable beyond the actual cash value of the

property at the time any loss or damage occurs." Actual cash value is what it costs to replace the property in the condition it was in at the time of the fire. This is also the insurable value, which represents cost of reproducing the burnable portion of the property based on current market prices for materials and labor, less a proper allowance for depreciation.

To determine insurable values appraisals may be resorted to, unless the book values may be regarded as satisfactorily reflecting such values. Undoubtedly, there are times when an appraisal is of great benefit to the insured, its cost being small in comparison with the amount saved.

6. Illustration

A concern sets aside substantial amounts for depreciation on a building built in 1910, also on equipment purchased at various times. Its balance sheet appears as follows:

BALANCE SHEET—COMPANY "X"
AS AT.....

ASSETS		LIABILITIES	
Land	$ 5,000.00	Capital Stock	$25,000.00
Building	20,000.00	Surplus—Earned	10,000.00
Equipment	12,000.00	Reserve for Depreciation:	
Current Assets	13,000.00	Building	6,000.00
		Equipment	5,000.00
		Current Liabilities	4,000.00
	$50,000.00		$50,000.00

An appraisal is made which gives the following values. These indicate what outlay would be required to replace plant and equipment:

	Reproductive Cost New	Sound Value	Insurable Value
Land	$10,000.00	$10,000.00	
Building	40,000.00	36,000.00	$31,000.00
Equipment	6,000.00	3,000.00	3,000.00

If the books were used as the basis for adjusting the loss, the insurance would amount to about $20,000.00. On the other hand, the appraisal shows cost of replacement, allowing $5,000.00 for the unburnable part, to be $34,000.00. With an appraisal and a proper insurance contract the insured would receive $34,000.00.

7. Settlement of Fire Losses

After a fire loss has occurred the insurance adjuster makes a finding of facts. If there is an appraisal of recent date, he will use it, adjusting it to date of the fire. If there is a complete set of books in use he will probably make use of these also. If neither of these sources of information is available a retrospective appraisal will be made. Because of the unsatisfactoriness of such appraisals it is desirable to have at hand the results of a fairly recent appraisal made by competent persons.

8. Appraisals for Tax Purposes

In case of personal property valuations the taxpayer's declarations are accepted, subject to revision. In case of real estate, the tax authorities set the valuation, but this is subject to revision upon proof of error existing therein. For purposes of inheritance taxation the administrator of the estate files his schedule with the authorities, who may make revision of the valuation placed thereon.

Claims for tax reductions, to be effective, must usually be accompanied by unbiased appraisals made by disinterested experts.

9. Appraisals for Financial Purposes

Reorganizations, mergers, and consolidations usually require the purchase and sale of properties. Appraisals are needed in such cases because of the effects of changing prices, errors arising from failure to distinguish accurately

between repairs and renewals, and inadequacy of formal methods of charging off depreciation.

10. Illustration—Consolidations

In consolidations it is sometimes desirable to reflect the results of appraisals on the books of each company concerned, thus placing them all on a basis of equality regardless of the price at which their assets were acquired, or the manner in which depreciation has been treated.

Assume that companies "A" and "B", engaged in manufacture, agree to consolidate. Each company is to receive capital stock for net assets turned over to the new company. The respective balance sheets giving effect to the book values are as below:

Assets	Book Value "A"	Book Value "B"
Cash	$ 1,000.00	$ 2,000.00
Accounts Receivable	2,000.00	2,500.00
Inventory	5,000.00	15,000.00
Land	5,000.00	20,000.00
Buildings	10,000.00	30,000.00
Plant and Equipment	40,000.00	75,000.00
Office Equipment	2,000.00	5,000.00
Total	$65,000.00	$149,500.00
Liabilities		
Notes Payable	$15,000.00	$ 20,000.00
Accounts Payable	9,000.00	10,000.00
Accrued Expenses	1,000.00	2,000.00
Reserve for Depreciation	5,000.00	2,000.00
Common Stock	25,000.00	50,000.00
Surplus—Earned	10,000.00	65,500.00
Total	$65,000.00	$149,500.00

A settlement on the basis of the above values would allow $35,000.00 stock to Company "A" and $115,500.00 to Company "B". However, Company "A" has treated capital assets conservatively; it has also priced its inventory conservatively. On the other hand, Company "B" has written off nothing for depreciation and has inflated its inventory.

Below are shown the results of an impartial appraisal.

Assets	Appraised Values "A"	"B"
Cash	$ 1,000.00	$ 2,000.00
Accounts Receivable	2,000.00	2,500.00
Inventory	5,000.00	10,000.00
Land	9,000.00	12,000.00
Buildings	15,000.00	25,000.00
Plant and Equipment	50,000.00	60,000.00
Office Equipment	3,000.00	2,500.00
Total	$85,000.00	$114,000.00
Liabilities		
Notes Payable	$15,000.00	$ 20,000.00
Accounts Payable	9,000.00	10,000.00
Accrued Expenses	1,000.00	2,000.00
Reserve for Depreciation	10,000.00	7,000.00
Common Stock	25,000.00	50,000.00
Surplus—Earned	10,000.00	65,500.00
Capital	15,000.00	40,500.00
Total	$85,000.00	$114,000.00

A settlement on the basis of the above values would allow $50,000.00 of stock to Company "A" and $75,000.00 to Company "B".

The following increases and decreases result from the appraisal:

	"A"		"B"	
Assets	Increase	Decrease	Increase	Decrease
Inventory	$ ——	$ ——	$ ——	$ 5,000.00
Land	4,000.00	——	——	8,000.00
Buildings	5,000.00	——	——	5,000.00
Plant and Equipment	10,000.00	——	——	15,000.00
Office Equipment	1,000.00	——	——	2,500.00
	$20,000.00			$35,500.00
Net Decrease		15,500.00	——	
Liabilities				
Capital Surplus	$15,000.00	——	5,000.00	$ ——
Depreciation Reserve	5,000.00	——	——	40,500.00
	$20,000.00		$5,000.00	$40,500.00
Net Decrease		15,500.00		

The consolidated balance sheet, based upon appraised values, would appear as follows:

Assets		Liabilities	
Cash	$ 3,000.00	Notes Payable	$ 35,000.00
Accounts Receivable	4,500.00	Accounts Payable	19,000.00
Inventory	15,000.00	Accrued Expenses	3,000.00
Land	21,000.00	Depreciation Reserve	17,000.00
Buildings	40,000.00	Capital Stock	125,000.00
Plant and Equipment	110,000.00	Surplus	——
Office Equipment	5,500.00		
Total	$199,000.00	Total	$199,000.00

11. Mergers

Sometimes one operating company absorbs one or more others engaged in the same line of business.

Where several companies are operating in the same line of business it frequently happens that a merger takes place whereby one of the operating companies absorbs the others.

12. Illustration—Mergers

Assume that companies "A", "B", and "C" have the following balance sheets at December 31, 1925:

Assets	"A"	"B"	"C"
Land	$ 5,000.00	$ 8,000.00	$ 10,000.00
Buildings	15,000.00	15,000.00	30,000.00
Equipment	50,000.00	40,000.00	100,000.00
Other Assets	40,000.00	30,000.00	75,000.00
	$110,000.00	$93,000.00	$215,000.00
Liabilities			
Capital Stock	$ 50,000.00	$50,000.00	$150,000.00
Surplus	25,000.00	15,000.00	5,000.00
Depreciation Reserve	15,000.00	10,000.00	30,000.00
Other Liabilities	20,000.00	18,000.00	30,000.00
	$110,000.00	$93,000.00	$215,000.00

The agreement is that the capital stock of "C" shall be increased to $300,000.00 and that said company shall ac-

quire all the assets and assume all the liabilities of companies "A" and "B", paying for the net assets with its capital stock at par. The value of these assets is to be determined by an appraisal.

The appraisal produces the following results:

Assets	"A"	"B"
Land	$ 5,000.00	$ 5,000.00
Buildings	20,000.00	16,000.00
Equipment	60,000.00	50,000.00
Other Assets	35,000.00	30,000.00
	$120,000.00	$101,000.00
Liabilities		
Capital Stock	$ 50,000.00	$ 50,000.00
Surplus:		
Earned	20,000.00	15,000.00
Capital	10,000.00	5,000.00
Depreciation Reserve	20,000.00	13,000.00
Other Liabilities	20,000.00	18,000.00
	$120,000.00	$101,000.00

The following entries give effect to the above values on the books of the respective companies:

Company "A"		
Building	$ 5,000.00	
Equipment	10,000.00	
To – Depreciation Reserve		$ 5,000.00
Capital Surplus		10,000.00
To give effect to the values as determined in the appraisal of Blank and Blank, dated December 31, 1925.		
Company "B"		
Building	$ 1,000.00	
Equipment	10,000.00	
To – Depreciation Reserve		$3,000.00
Land		3,000.00
Capital Surplus		5,000.00
To give effect to values determined in appraisal of Blank and Blank, dated December 31, 1925.		

With the books adjusted as above the assets and liabilities would be transferred to Company "C" thus:

COMPANY "A's" BOOKS

Depreciation Reserve	$20,000.00	
Other Liabilities	20,000.00	
Company "C", Vendee	80,000.00	
To – Land		$ 5,000.00
Buildings		20,000.00
Equipment		60,000.00
Other Assets		35,000.00

To record transfer of assets to Company "C" and its assumption of our liabilities.

COMPANY "B's" BOOKS

Depreciation Reserve	$13,000.00	
Other Liabilities	18,000.00	
Company "C", Vendee	70,000.00	
To – Land		$ 5,000.00
Buildings		16,000.00
Equipment		50,000.00
Other Assets		30,000.00

To record transfer of assets to Company "C" and its assumption of our liabilities.

On the books of Company "C" the above entries would be reversed and the assets taken on at appraised values. It, in turn, would close the transaction with the following entry:

Company "A", Vendor	$80,000.00	
Company "B", Vendor	70,000.00	
To – Capital Stock		$150,000.00

To record payment of capital stock in settlement of merger agreement.

After taking up the stock on their respective books a trial balance of "A" and "B" would appear as shown at the top of the following page.

The final step for Companies "A" and "B" is to make a distribution of Company "C's" capital stock to their stockholders and give effect to this distribution on their books.

	"A"	"B"
ASSETS		
Capital Stock of Company "C"	$ 80,000.00	$ 70,000.00
LIABILITIES		
Capital Stock	$ 50,000.00	$ 50,000.00
Surplus:		
Earned	20,000.00	15,000.00
Capital	10,000.00	5,000.00
	$ 80,000.00	$ 70,000.00

Stockholders of Company "A" would receive 1 3/5 shares of the capital stock of Company "C" for each share they own, while stockholders of Company "B" would receive 1 2/5 shares of the capital stock of Company "C" for each share they own of Company "B".

XX

TREATMENT OF CORPORATE REVENUES AND SURPLUS

1. Origin of Surplus

Surplus is the excess of assets over liabilities and capital stock. It is derived from various sources, consequently should be classified so that the significance of its derivation may not be lost. Thus three well known sources of surplus are:

1. Net profits retained
2. Sale of capital stock at a premium
3. Revaluation of plant

That these elements of surplus should be kept distinct at all times is evident from the fact that the uses to which they may be put differ. Surplus derived from accumulation of net profits may be used for payment of dividends, whereas that derived from the other two sources mentioned above is not usually regarded as being available for dividend distribution. Some authorities object to showing any surplus arising from revaluation of plant, preferring to wait until plant is disposed of to show results of the increased valuation. At any rate, it is evident that surplus derived from each of these sources possesses its own peculiar characteristics and that therefore the origin of surplus should not be lost sight of during the life of a corporation. Suitable sub-captions under surplus for that derived from the above three sources would be:

1. Earned Surplus
2. Paid-in Surplus
3. Surplus Arising from Revaluation of Capital Assets

A slightly different scheme of nomenclature would be:

Surplus
1. Earned
2. Capital
    a. Paid in
    b. Arising from Revaluation of Capital Assets

2. Origin of Earned Surplus

A discussion of the origin of earned surplus involves a consideration of gross revenue and the various deductions made therefrom to arrive at net profit. The various revenues of a business may be classified as follows:

1. Revenue from operations
    (*a*) Ordinary
    (*b*) Extraordinary
2. Revenue from investment

To illustrate, assume the case of a railroad company which, in addition to operating a railroad, operates a hotel and owns the securities of certain other companies. Its income from ordinary operations is that derived from operating the railroad, its income from extraordinary operations is that derived from operating the hotel, and its income from investments is that derived from securities owned.

3. Revenue from Ordinary Operations

In the majority of cases this is the item of chief importance, hence the one to which the greatest attention must be given in an attempt to increase profits. Even holding companies are primarily concerned with the ways and means of increasing the revenue which their subsidiaries derive from ordinary operations. The sources of revenue and the necessity of stabilizing it are matters of such great importance as to deserve careful study. In a broad sense the question is one of the stabilization of business generally, which in turn is a corollary of the economic problem of coordination of production and consumption.

Illustrative of the efforts required to smooth out seasonal fluctuations, reduce the expense of high labor turnover, and

decrease the costs of carrying high inventories, may be taken the experience of General Motors Corporation.

General Motors Corporation is engaged in the manufacture and sale of automobiles, automobile accessories and parts, refrigerators, etc. Less than 4% of its product is sold at retail. The company has experienced a development commensurate with that of the automobile industry, increasing its output from 25,000 cars in 1909 having a sales value of $29,029,000, to 835,902 cars and trucks in 1925 having a sales value of $734,592,000. Total assets of the company increased from $18,381,000 at the end of 1909, to $703,786,000 at the end of 1925.

It is the policy of the company to price its products in a manner consistent with its policy as to a return on its investment and to control its manufacturing operations by means of schedules coordinated with the demand of the consuming public. This necessitates the careful estimation of future business, the scientific control of inventories, and the adequate management of commitments for materials.

In making forecasts the following factors are given consideration: growth, seasonal variation, condition of general business, and competition. Forecasting is also done with reference to certain fundamental policies of the company relative to:

1. Return on the investment
2. Standard price

Regarding these two policies Mr. Albert Bradley, assistant treasurer of General Motors Corporation, says:

1. Whether a business be large or small, there is need of a policy in regard to the relation of capital investment to price of product, and the condition under which additional capital is to be used to expand the business (either through retention of earnings instead of paying dividends, or from sale of capital securities). The governing considerations are rate of return on investment and the relationship of capacity to average and peak demands. In a small business where ownership and management are identical, the fundamental policy may never be formally expressed, but it will nevertheless be taken into account by the owner-manager in mak-

ing up his mind whether or not to make any additions to his plant. In the typical large industry, however, where capital is supplied by a large number of stockholders, many of whom are not active in the management, and particularly where the operations are diversified and scattered, it is essential that machinery be established by which the fundamental considerations of pricing of product and expansion programs can be related to the established policies.

Return on Investment is the basis of the policy in regard to the pricing of product, but it must be understood that the fundamental consideration is the average return over a protracted period of time, not the specific rate of return over any particular year or short period of time. This long-time rate of return on investment represents the official viewpoint as to the highest average rate of return which can be expected consistent with a healthy growth of the business, and may be referred to as the economic return attainable.

2. The Corporation's fundamental price policy, once formulated, is completely expressed in the conception of standard volume and expected long-time average rate of return on investment. The price of any product which will satisfy these conditions is its standard price. It is expected that in actual practice prevailing price will be above standard price at certain times, and below at other times, and it may never exactly coincide with the standard price; but the determination of standard price is desirable for two reasons:

(1) It affords a standard with which the actual prices or contemplated prices can be compared, so that variance can be given necessary consideration, thus guarding against the possibility of unintentionally pricing either an entire line or certain models in a manner inconsistent with the fundamental price policy in the matter of return on investments.

(2) The policy itself is thereby submitted to the test of experience, so that if over a long period of time standard price cannot be realized, then the fundamental policy as to return on capital attainable in the business requires modification.

It is such policies that are fundamental to the stabilizing of revenue from operations as well as to increasing its amount to the maximum. For a discussion of some of the tests for determining the efficiency of operations, see Chapter XXV, "The Investment in Plant." A study of such tests will suggest steps to be taken in individual cases.

4. Origin of Paid-In Surplus

The principal sources of paid-in surplus are as follows:

1. Amount paid in for capital stock in excess of its par or stated value
2. Donated stock
3. Forfeitures on stock subscriptions
4. Assessments on capital stock
5. Profits on sale of treasury stock

1. Stock having a par value is sometimes sold at a premium, in which event the premium is credited either to a Premium on Capital Stock account or directly to Paid-in Surplus account. If the credit is to Premium on Capital Stock account this should be regarded as a division of Paid-in Surplus.

In case of non par value stock no premium arises if the capital stock account is credited at whatever price it will bring. Sometimes, however, whatever is received above a stated price is treated as paid-in surplus. There is little reason for the adoption of such an arbitrary line of distinction between capital stock and surplus in case of non par value stock. In fact, one of the reasons for the adoption of non par value stock is to avoid the difficulties that arise in connection with premium and discount on capital stock accounts.

2. When capital stock is donated the par value of the stock donated is credited to Donated Surplus account. Later, when the stock is sold, Donated Surplus account is transferred to Paid-In Surplus account, proper adjustment being made for excess or deficiency of the amount received as compared with the par value of the stock.

3. When a forfeiture occurs on stock subscriptions the stock is resold, the excess realized over and above the amount necessary to complete the payment on the original subscription being credited to Paid-In Surplus account.

4. Sometimes full paid stock is assessed as a measure against insolvency, sometimes as a step towards the resuscitation of a corporation passing through receivership. Such

assessments should be credited to Paid-In Surplus account.

5. Treasury stock is acquired in various ways. One way is through donations, considered above. Frequently it is acquired through purchase, in which case any excess over cost received on its sale represents a credit to Paid-In Surplus account. Vice versa, any loss realized on such a sale should be charged to Paid-In Surplus account.

5. Capital Surplus Arising from Revaluations

For a detailed discussion of capital surplus arising from the revaluation of capital assets see Chapter XIX.

6. Treatment of Surplus

A large surplus, especially earned surplus, is indicative of successful operations in the past and a reserve against future contingencies. However, few companies can hope to retain all their earnings as surplus because the stockholders expect some current return of their investment. The accumulation of a surplus is one means of financing additions and betterments.

Surplus is sometimes capitalized through the declaration of a stock dividend. A stock dividend, by increasing the number of outstanding shares, enables the company to avoid the appearance of making excessive dividend disbursements.

The chief credits to surplus arise from (*a*) net profits for the current period, (*b*) profits applicable to previous periods taken up in the current period, (*c*) premiums received from sale of capital stock, (*d*) donations, (*e*) profit on sale of treasury stock, (*f*) assessments on capital stock, (*g*) revaluation of capital assets, and (*h*) forfeitures by subscribers to capital stock.

The chief debits to surplus result from (*a*) net losses for the current period, (*b*) dividends declared, (*c*) extraordinary losses, (*d*) adjustments applicable to former periods resulting in losses, (*e*) revaluations of capital assets, (*f*) discounts on capital stock sold.

7. Surplus Reserves

Sometimes a portion of surplus, usually earned surplus, is set aside for a specified object, this object usually being indicated by the name of the account. Unreserved surplus is ordinarily regarded as available for distribution as dividends. To remove the temptation, at least in some degree, to so employ it, it may be reserved by being transferred to a special account. Usually the board of directors would have power to transfer such reserved surplus back to free surplus; nevertheless there would be some hesitation in doing so if it involved a reversal of policy. In some instances, of course, contractual arrangements may make the retention of the reserve compulsory.

Among common forms of surplus reserves to be considered are the following:

1. Reserves for redemption of bonded indebtedness
2. Reserves for contingencies
3. Reserves for betterments

1. Sinking fund reserves for redemption of bonds are not usually required by trust deeds, whereas sinking funds are required. After these reserves have served their purpose they are transferred back to free surplus. They are formed by a charge to Surplus account and a credit to Sinking Fund Reserve account.

2. Reserves for contingencies are less specific in character than are sinking fund reserves and are simply reservations of what would otherwise be free surplus in order that future unexpected losses may be absorbed without endangering the concern's financial condition.

3. Reserves for betterments consist of surplus earmarked with a view to enabling the company, at some future time, to engage in a program of construction. It is natural that when surplus is thus retained the cash and working capital position of the company is improved, enabling it to better undertake an expansion program than it could do if the surplus were used to declare dividends.

8. Dividends

It is a principle of finance that dividends should be paid from earned surplus, but exceptions occur. Thus in case of companies engaged in the exploitation of wasting assets it is recognized that dividends may be distributed from capital because of the undesirability of attempting to retain the total investment intact. As to stating precisely what rules must govern, Seymour Walton says:

> It is difficult to state concisely a rule for determining the legality of a dividend, partly because of the various sources of surplus, and partly because of the diversity of judicial decisions governing the matter. It is sometimes stated that dividends can be paid only from profits, but this is not an exact statement because the law allows a corporation to distribute in the form of dividends any premium which may have been paid to the company on its stock. It is true that the directors should not deceive the stockholders by allowing them to believe that the dividend was provided by profits, but this is a question of ethics and not of law.
>
> Nor is the statement correct that dividends can be paid only from surplus, which means that after the dividend has been paid there must be actual net assets equal to the capital stock. For instance, if the development or organization expense is still carried on the books as an asset, it is not imperative that it shall be written off before a dividend is paid, provided a reasonable portion of it is canceled and the course of the business justifies the carrying of the remainder as a deferred charge.[1]

For companies exploiting natural resources the leading case is *Lee* v. *Neuchatel Asphalt Co.*, L. R. 41 Ch. D. 1, decided in 1889. In this English decision it was held that if the company retains sufficient assets to pay its debts there is nothing to prevent it from paying out any excess money as dividends.

As to dividends of corporations other than those engaged in exploiting natural resources, the rule in the United States is that past deficits from operations must be made up before dividends may be declared.[2]

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[1] Seymour Walton, *Advanced Accounting*, p. A-271.
[2] See *Journal of Accountancy*, March, 1923.

Dividends are declared payable to stockholders of record as of a given date, but this date must succeed that of the day the dividend is declared. The dividend notice specifies this date, also the date on which the dividend will be paid, as well as the date the resolution declaring the dividend is passed. Sometimes the books are closed for a period beginning on the date specified as that on which stockholders of record are entitled to the dividend, but the custom is growing of not closing the transfer books, the dividend being made payable to stockholders of record as of the close of a specified day.

9. Dividends Classified

Regular dividends are those which the company expects to pay quarterly at a specified rate. It is generally the policy of a company to set this rate low enough so that it may have reasonable expectations of keeping up the dividends at that rate. If earnings over a period warrant, the regular dividend may be increased, but rather than increase the rate when it is not reasonably certain that it can be continued, extra dividends are declared.

Extra dividends are those declared additional to the regular dividends but without the expectation that they will be made permanent.

Stock dividends are those paid by issuing additional stock on a pro rata basis.

Cash dividends are those payable in cash.

Liquidation dividends are those paid out of the assets of a concern being wound up.

Scrip dividends are those payable in notes which are later to be redeemed, usually in cash.

10. Dividend Record of General Motors Corporation

The following extract from the annual report of General Motors Corporation for 1927 illustrates several forms of dividends.

Record of Dividend Payments

The regular quarterly dividend on the common stock was increased to the rate of $8.00 per share per annum as of March 12, 1927. On July 5, 1927, an extra dividend of $2.00 per share was paid. In September two shares of new $25.00 par value common stock were issued in exchange for one share of no par value common stock previously outstanding. As of December 12, 1927, a regular quarterly dividend was established on the new stock at the rate of $5.00 per share per annum. On January 3, 1928, an extra dividend of $2.50 per share was paid to stockholders of record November 19, 1927.

A detailed record of the dividends declared by quarters during the year ended December 31, 1927, together with the dates of payment, is as follows:

Periods	7%* Preferred Stock	6% Debenture Stock	6% Preferred Stock	Date of Payment	Stock of Record	Common Stock	Date of Payment	Stock of Record
1st Quar.	$1.75	$1.50	$1.50	Feb 1	Jan. 10	$2.00	Mar. 12, 1927	Feb. 19, 1927
2nd Quar.	1.75	1.50	1.50	May 2	Apr. 9	2.00	June 13, 1927	May 21, 1927
						Extra 2.00	July 5, 1927	May 21, 1927
3rd Quar.	1.75	1.50	1.50	Aug. 1	July 5	2.00	Sept. 12, 1927	Aug. 20, 1927
4th Quar.	1.75	1.50	1.50	Nov. 1	Oct. 10	1.25	Dec. 12, 1927	Nov. 19, 1927
						Extra 2.50	Jan. 3, 1928	Nov. 19, 1927

The payments by years since the organization of General Motors Corporation of Delaware, the present Corporation, follow:

	7%* Preferred	6% Debenture	6% Preferred	Common		
				$100 Par	No Par	$25 Par
1917	.....	.....	(1) $6.00	(4) $10.00	.....	.....
1918	.....	.....	6.00	12.00	.....	.....
1919	.....	(2) $6.00	6.00	12.00	.....	.....
1920	(3) $5.25	6.00	6.00	(5) 5.50	(6) $0.75	.....
1921	7.00	6.00	6.00	.....	(7) 1.00	.....
1922	7.00	6.00	6.00	.....	(8) .50	.....
1923	7.00	6.00	6.00	.....	(9) 1.20	.....
1924	(*) 7.00	6.00	6.00	.....	(10) 2.15	.....
1925	7.00	6.00	6.00	.....	(11) 12.00	.....
1926	7.00	6.00	6.00	.....	(12) 15.00	.....
1927	7.00	6.00	6.00	.....	(see table above)	

*At a special meeting of stockholders in June, 1924, the name of this stock was changed from 7% Debenture to 7% Preferred and the initial dividend of $1.75 on the new 7% Preferred was paid November 1, 1924. (1) Initial $1.50 quarterly paid February 1, 1917. (2) Initial $1.50 quarterly paid February 1, 1919. (3) Initial $1.75 quarterly paid May 1, 1920. (4) Initial $1.00 quarterly paid February 1, 1917, and thereafter $3.00 quarterly to and including February 1, 1920.

(5) Final $2.50 cash and common stock dividend of ¼ share common no par value paid May 1, 1920. On and after March 1, 1920, ten shares no par value common exchanged for each share $100 par value.

(6) Initial 25 cents quarterly cash and stock dividend of 1/40th share common paid May 1, 1920, which rate was paid August 2, and November 1, 1920.
(7) During 1921 on February, May, August and November first business day, each quarterly dividend of 25 cents cash. Quarterly dividend due February 1, 1922, was passed at meeting held January 4, 1922.
(8) "Special" dividend of 50 cents a share paid December 20, 1922, stock of record November 27, 1922.
(9) During 1923, on March 15, June 12, September 12 and December 12, a dividend of 30 cents cash was paid; and this rate was continued during 1924 by a payment of 30 cents a share March 12, June 12 and September 12, on the no par common capitalized at $10 a share.
(10) On account of charter changes, the number of shares of common stock was reduced in 1924, through the exchange of four shares of old stock for one share of new no par value common stock, resulting in reducing the common shares outstanding to one-quarter of the number theretofore outstanding. An initial dividend of $1.25 a share on this new stock was paid December 12, 1924; this was increased to $1.50, payable March 12, 1925, and was continued through the year.
(11) In addition to quarterly dividends of $1.50 a share, an extra cash dividend of $1.00 a share was paid September 12, 1925, to stock of record August 24, 1925; also an extra cash dividend of $5.00 a share was paid January 7, 1926, to stock of record November 23, 1925.
(12) In addition to quarterly dividends of $1.75 a share, an extra cash dividend of $4.00 a share was paid July 2, 1926, to stock of record May 24, 1926. On September 11, 1926, a 50% dividend was paid in common stock and payments of $1.75 a share were continued on the increased number of shares. An extra cash dividend of $4.00 a share was paid January 4, 1927, to stock of record November 20, 1926.

11. Declaration of Dividends

The by-laws usually contain some provision relative to the declaration of dividends. Subject to such provisions the power to declare dividends rests with the board of directors. Before declaring a dividend it is customary for the directors to require a statement of earnings showing what profits are available for that purpose. This is especially important when the accumulated surplus derived from operations of previous periods is not sufficient to meet the requirements of the contemplated dividend. Directors are personally liable for depletion of capital through dividend payments. It is their duty to keep posted on the company's earnings, and to avoid improper dividend distributions.

The declaration of a dividend renders the company directly liable thereon as in case of other unsecured debts. However, until the fact has become known that a dividend has been declared the board of directors may rescind its action.

The directors possess wide discretion as to what action they may take regarding payment of dividends, being limited in action only by by-law, charter, or statutory provisions. The courts will intervene only where the directors have obviously abused their power.

12. Dividends on Preferred Stock

Some of the conditions attaching to preferred stock are considered elsewhere in this volume. In case of non-cumulative preferred stock the dividend in a given year is wholly lost to the stockholders if it is not earned. This situation is liable to tempt the management, which is usually controlled by the common stock, to contrive methods of cutting down the apparent profits in some years in order that in other years sufficient profits may be shown to permit dividend payments on both preferred and common stocks. In this matter the courts tend to intervene, however, and to hold that dividends on non-cumulative preferred stock must be paid if profits earned in any year are sufficient for that purpose.

13. Accounting Treatment of Dividends

Dividends do not accrue as does interest on bonds, but as soon as declared by the directors they become a direct liability of the company and should be reflected as such in the accounting records. In connection with cash dividends the following accounts are employed:

1. Surplus account, which is charged with the amount of the dividend.
2. Dividends Payable account, which is credited with the amount of the dividend. This is a liability account.

It is customary to carry the balance of Profit and Loss account to Surplus account, then to charge Surplus account with the amount of the dividend, rather than to charge it to Profit and Loss account. This seems preferable to charging Profit and Loss account direct, although this procedure is sometimes followed. Regular dividends are usually numbered, and if special checks are issued in payment these bear the number.

To illustrate, if at their annual meeting held on February 20, the board of directors of Company X declare a dividend of 6% on outstanding capital stock of $1,000,000, payable in quarterly instalments of $15,000 each on April, July, Octo-

ber and January 1, the entry to be made on the books of account on February 20 is as follows:

Surplus	$60,000	
To Dividend Payable No. 26		$60,000
Twenty-sixth annual dividend of 6% declared by resolution of board of directors Feb. 20, 19..		

The entry each time a quarterly instalment is paid is:

Dividend Payable No. 26	$15,000	
To Cash		$15,000
For payment of quarterly instalment on annual dividend No. 26.		

14. Dividends Payable in Other Media Than Cash

Sometimes, owing to a temporary shortage in cash, dividends are declared payable in interest bearing scrip, redeemable in cash at a later date. In this event, the entry at time of declaring the dividend is the same as above, viz., a charge to Surplus account and a credit to Dividend Payable account, but instead of crediting cash when the dividend is paid, the credit is to Dividend Scrip Payable account, thus:

Dividend Payable	.....	
To Dividend Scrip Payable		.....
(Explanation)		

Later, when the scrip plus interest thereon is paid the entry is:

Dividend Scrip Payable	.....	
Interest	.....	
To Cash		.....
(Explanation)		

When stock dividends are declared the entry consists in a charge to Surplus account and a credit to Capital Stock account. It is necessary, of course, to have sufficient capital stock authorized but unissued with which to pay the dividend. If the dividend is payable in par value stock it is expressed as a percentage of the par value of the outstanding stock on which the dividend is made payable. Thus if the

outstanding common stock amounts to $100,000 and a stock dividend of 10% is declared the entry is:

Surplus	$10,000	
To Dividend Payable (Explanation)		$10,000

and at time of payment:

Dividends Payable	$10,000	
To Capital Stock (Explanation)		$10,000

When dividends are paid in non par value stock the effect is not to transfer a portion of surplus to capital stock account but merely to divide up the equity of the stockholders among a larger number of shares. Consequently the entry is made merely as a matter of record, thus:

Surplus	$ None	
To Dividend Payable (Explanation)		$ None

and when paid:

Dividend Payable	$ None	
To Capital Stock (Explanation)		$ None

FORM 278

DIVIDEND NOTICE

ARMOUR and COMPANY

The Board of Directors of Armour and Company met on February 17 and declared the following dividend:

ARMOUR AND COMPANY
(ILLINOIS)

A quarterly dividend (1¾%) on the preferred stock, payable April 1, 1928, to stockholders of record March 10, 1928.

ARMOUR AND COMPANY
OF DELAWARE

A quarterly dividend (1¾%) on the preferred stock, payable April 1, 1928, to stockholders of record March 10, 1928.

WILLIAM P. HEMPHILL,
Secretary.

FORM 279

DIVIDEND NOTICE (ANOTHER FORM)

NEBRASKA POWER COMPANY

Preferred Stock Dividend No. 43

The regular quarterly dividend of 1¾% on the Preferred Stock of Nebraska Power Company has been declared for payment March 1, 1928, to preferred stockholders of record at the close of business February 14, 1928.

S. E. SCHWEITZER,
Treasurer.

FORM 280

DIVIDEND NOTICE (ANOTHER FORM)

AMERICAN WATER WORKS AND ELECTRIC COMPANY

INCORPORATED

(of Delaware)

A regular quarterly dividend of $1.50 per share on the $6 Series, First Preferred Stock of the Company, for the quarter ending March 31, 1928, has been declared payable April 2, 1928, to stockholders of record at the close of business on March 12, 1928.

W. K. DUNBAR,
Secretary.

FORM 281

DIVIDEND NOTICE (ANOTHER FORM)

GENERAL GAS & ELECTRIC CORPORATION

Regular quarterly dividends on the following stocks of this Corporation have been declared, payable on April 1, 1928, to stockholders of record at the close of business on March 12, 1928, said dividends being on the quarter ending March 31, 1928:

$2.00 per share on the $8.00 Cumulative Preferred Stock, Class A
$1.75 per share on the $7.00 Cumulative Preferred Stock, Class A
$1.75 per share on the Cumulative Preferred Stock, Class B.
37½c. per share on the Common Stock, Class A.

Holders of Common Stock, Class A, are given the right to subscribe to additional shares of Common Stock, Class A, of this Corporation at the price of $25.00 per share to the extent of the dividends payable to them on April 1, 1928. The Equitable Trust Company of New York, Transfer Agents, will deliver to each of the holders of Common Stock, Class A, entitled to the

dividend payable April 1, 1928, Common Stock, Class A, or scrip certificates therefor, equivalent in amount, taken at $25.00 per share, to the number of dollars of dividends to which each such stockholder would be entitled, unless advised by such stockholder on or before March 21, 1928, that such stockholder does not exercise the right of subscription to which he is entitled and requests the payment of the dividend in cash.

O. Clement Swenson,
Secretary.

New York, February 1, 1928.

Form 282

Dividend Notice (Another Form)

KANSAS CITY POWER & LIGHT COMPANY
Kansas City, Missouri
First Preferred, Series "B," Dividend No. 5
Kansas City, Missouri, February 15, 1928.

The regular quarterly dividend of $1.50 per share on the First Preferred, Series "B" Stock of the Kansas City Power & Light Company has been declared payable April 1, 1928, to stockholders of record at the close of business, March 14, 1928.

All persons holding stock of the company are requested to transfer, on or before March 14, 1928, such stock to the persons who are entitled to receive the dividend.

Chester C. Smith,
Secretary.

KANSAS CITY POWER & LIGHT COMPANY
Kansas City, Missouri
First Preferred, Series "A," Dividend No. 23
Kansas City, Missouri, February 15, 1928.

The regular quarterly dividend of $1.75 per share on the First Preferred, Series "A" Stock of the Kansas City Power & Light Company has been declared payable April 1, 1928, to stockholders of record at the close of business, March 14, 1928.

All persons holding stock of the company are requested to transfer, on or before March 14, 1928, such stock to the persons who are entitled to receive the dividend.

We again call your attention to the fact that this stock has been called for redemption on April 1, 1928, and that payment therefor will be made at the office of the Guaranty Trust Company of New York, 140 Broadway, New York City, New York.

Chester C. Smith,
Secretary.

FORM 283

DIVIDEND NOTICE (ANOTHER FORM)

ASSOCIATED GAS AND ELECTRIC COMPANY
61 Broadway, New York

DIVIDENDS

The Board of Directors has declared the following quarterly dividends payable April 2 to holders of record February 29, 1928:

DIVIDEND NO. 25

Original Series Preferred Stock—87½c per share in cash or 2.27/100th of a share of Class A Stock for each share of Preferred Stock held.

DIVIDEND NO. 11

$7 Dividend Series Preferred Stock—$1.75 per share in cash or 3.98/100th of a share of Class A Stock for each share of Preferred Stock held.

The stock dividend is equivalent to approximately $4.28 per share per annum for the Original Series as compared with the cash dividend of $3.50 per share, and $7.48 per share per annum for the $7.00 Dividend Series Preferred Stock.

M. C. O'KEEFFE,
Secretary.

FORM 284

DIVIDEND NOTICE (ANOTHER FORM)

A regular quarterly cash dividend of two per cent and an extra cash dividend of two per cent on the common stock of this Company has been declared payable April 2nd, 1928, to stockholders of record at the close of business March 9th, 1928.

REO MOTOR CAR COMPANY.

FORM 285

DIVIDEND NOTICE (ANOTHER FORM)

J. I. CASE THRESHING MACHINE COMPANY
INCORPORATED

Racine, Wis., U. S. A., February 20th, 1928. A dividend of $1.75 per share upon the outstanding Preferred Stock and a dividend of $1.50 upon the outstanding Common Stock of this Company has been declared, payable April 1st, 1928, to the holders of record at the close of business March 12th, 1928.

THEO. JOHNSON,
Secretary.

FORM 286

NOTICE TO DIRECTORS OF MEETING TO DECLARE DIVIDEND

THE ..... COMPANY

To.....

You are hereby notified that a meeting of the Board of Directors of The ..... Company has been called for ....., 19.., at .. o'clock .. M., for the purpose of declaring a dividend of $..... per share upon the common capital stock of The ..... Company for the period beginning ....., 19.. and ending ....., 19.. and payable to stockholders of record at .. o'clock .. M. on the date of ....., 19...

.....,
President.

FORM 287

RESOLUTION DECLARING DIVIDEND

Resolved, that a dividend of $..... be and is hereby declared out of the earned surplus of the corporation on the outstanding capital stock of this corporation, said dividend to be payable to stockholders on the ..... day of ....., 19...

NOTE: The terms of this resolution may be modified to suit the requirements. Thus provision might be made for dividends on two or more classes of stock, or for the payment of a scrip dividend, or for the payment of accumulated dividends on preferred stock, or for the payment of the dividend in instalments, or for the payment of a stock dividend.

FORM 288

LETTER ACCOMPANYING DIVIDEND CHECK

The enclosed check is in payment of the regular quarterly dividend of one and one-half per cent on the common stock of this company standing in your name at the close of business ....., 19... No acknowledgment is necessary other than your endorsement on the back of this check. Kindly notify us at once of any change in your address.

.....,
Treasurer.

Dividend No. .....

FORM 289

STANDING DIVIDEND ORDER

To.....Treasurer
.....Company

I hereby notify you that until you receive further notice from me, you are instructed and directed to mail all dividend checks payable to my order to me at the address given below.

.....
Signature of Stockholder

Name and address to which checks are to be mailed
Name .....
Address .....

NOTE: In case checks are payable to a person other than the one who signs the dividend order the signature of the signer should be acknowledged before a notary public. If the order is signed by an attorney or other party acting in a fiduciary capacity, suitable evidence must be given of the signer's capacity.

FORM 290

STANDING DIVIDEND ORDER (ANOTHER FORM)

.....19....

TO THE TREASURER OF
CITIES SERVICE COMPANY
60 Wall Street, New York City.

Sir:

Until this order is revoked by me in writing, please make checks to the order of

.....

for all cash dividends due or which shall become due on all shares of Preferred and Common stock now standing or which may hereafter stand in my name on the books of your company, and remit all such checks by mail to said

.....

at .....

Sign here .....
SIGNATURE GUARANTEED
.....

This form is to be used ONLY when it is desired to have checks for dividends made payable to some person or concern OTHER THAN THE STOCKHOLDER. Notification of address or change thereof may be made by letter.

Form 291

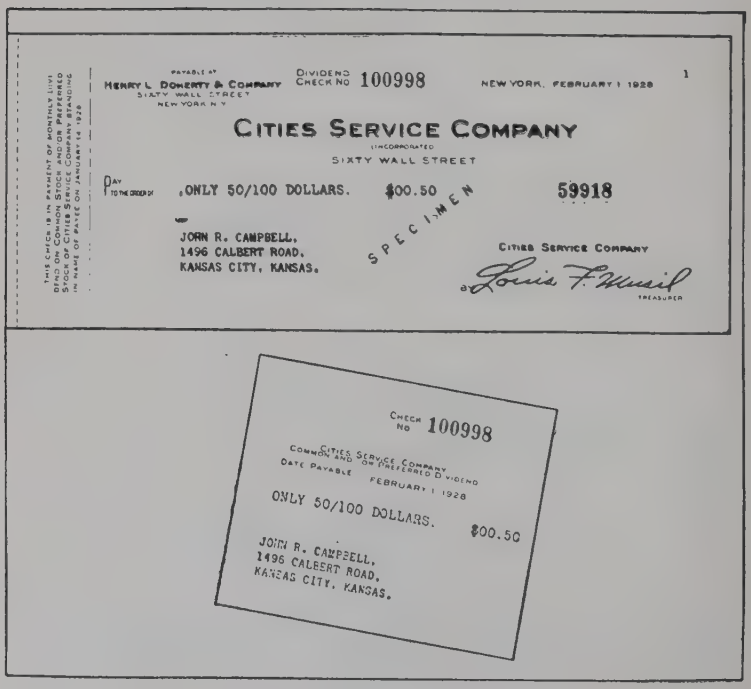
Form of Dividend Book

Dividend No. ..... of $..... per share or of ..... per cent of The ..... Company declared ....., 19.. at a ..... meeting of the Board of Directors of The ..... Company, payable to stockholders as follows:

Name.	Address.	No. of shares held.	Amount of dividend.	Date of payment.	Remarks.

Form 292

Dividend Check with Stub



Form 293

Notice Accompanying Dividend Check

AMERICAN STEEL FOUNDRIES
410 NO. MICHIGAN AVE

COMMON STOCK DIVIDEND

CHICAGO, ILL., JANUARY 14TH, 1928

ON DECEMBER 1ST, 1927, THE DIRECTORS DECLARED A QUARTERLY DIVIDEND OF SEVENTY-FIVE CENTS (75¢) PER SHARE UPON THE OUTSTANDING NO PAR COMMON STOCK OF THE COMPANY, FOR THE QUARTER ENDING DECEMBER 31ST, 1927, PAYABLE THIS DAY TO STOCKHOLDERS OF RECORD JANUARY 3RD, 1928.

ENCLOSED PLEASE FIND CHECK FOR THE ABOVE DIVIDEND ON SUCH COMMON STOCK STANDING IN YOUR NAME, OR FOR WHICH A DIVIDEND ORDER WAS ON FILE, AT THE CLOSE OF BUSINESS JANUARY 3RD, 1928.
NO RECEIPT OR ACKNOWLEDGMENT IS NECESSARY

F. E. PATTERSON, TREASURER

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS, GIVING BOTH OLD AND NEW ADDRESSES

OLD ADDRESS

NEW ADDRESS

(SIGNATURE) _____

N. B WRITE AND SIGN NAME EXACTLY AS IT APPEARS ON STOCK CERTIFICATE.

XXI

CORPORATION REPORTS

1. Nature of Corporation Reports

Corporation reports need not conform to any standard of form and content other than those required by law, stock exchanges, associations, and the fair treatment of stockholders and creditors which business ethics demand. Beyond these fundamental requirements circumstances must determine the nature, extent and form of the information to be submitted. The annual report to stockholders is the one best known, but many companies issue quarterly reports, some issue monthly reports, and all are interested at one time or another in special reports of one sort or another.

For internal managerial purposes daily reports of sales, cash receipts and disbursements, inventories of merchandise and supplies on hand, and so on, are required. Much of the success achieved by a business depends upon the promptness, accuracy and thoroughness of reports submitted daily, monthly, and annually to the management.

Reports may be grouped as

(1) Those for the stockholders' information,
(2) Those to promote management,
(3) Those required by state officials or other governing bodies, although the three types of reports are not necessarily distinct.

1. Reports for Stockholders' Information

There is some information which a company does not care to make public because secrecy in connection with it is essential to the successful prosecution of the concern's program. As to the extent of the information which should be

broadcast in the form of published reports, opinions and the policies of corporations differ. Corporations whose stocks are closely held and which are not under obligation to stockholders whose sole source of information is the published report may disclose little or no information to the public. Corporations whose stocks are listed on a stock exchange are, by the requirements of the exchange, compelled to conform to certain regulations regarding information to be furnished to the exchange as well as to stockholders. Companies which desire to make public offering of securities must meet the requirements of investment bankers as to information needed to determine the investment status of the securities.

2. Annual Report to Stockholders

The chief function of the annual report is to give stockholders timely information concerning the progress made by their company and to set before them its status as at the close of the fiscal year. Sometimes, however, the annual report takes on itself the character of a detailed exposition of the company's undertakings—statistical analysis, graphic representation, charts, tables, and so on being employed to aid in clearly setting forth the facts.

To be useful, annual reports, like others, must be timely. They must be ready to present to the annual meeting of stockholders, usually held two or three months after the fiscal year's close. Frequently they are published and distributed weeks before the date of the annual meeting, in which event the reading of the report at the meeting may be simply a formality. The annual report of President Sloane of General Motors Corporation to the stockholders, for 1927, was dated March 8, 1928, but the annual meeting was not held until May 10, 1928. The annual report of President Gifford of the American Telephone and Telegraph Company, for 1927, was dated March 2, 1928, and the annual meeting was held March 27, 1928.

Below are presented outlines of several typical annual

corporation reports with sufficient excerpts therefrom to give an adequate idea of their content and structure.

3. Annual Report of American Telephone and Telegraph Company

The report of the American Telephone and Telegraph Company for the year 1927 is entitled "Report of the Board of Directors to the Stockholders for the year 1927." On the page following the title page is given a "Chronology," setting forth events relating to the telephone and telegraph industry from 1876 to 1927, inclusive. Next, on page 3, are given the names of officers and directors, there being nineteen directors and eleven vice presidents. Page 4 presents a map of the United States divided in territories occupied by the various subsidiary companies. Pages 4 to 12, inclusive, present the written statement of President Gifford to the stockholders, being signed:

For the Directors,
WALTER S. GIFFORD,
President.

This begins with a statement regarding the growth of the company during 1927; comment is also made regarding the quality, speed and dependability of the service performed. Next, under the heading "Statement of Policy" comment is made as to the policy of the company relative to payment of dividends:

> Its duty is to provide the American public with adequate, dependable and satisfactory telephone service at a reasonable cost. To attain this end, it is the policy of the company to pay only reasonable regular dividends and, for part of the new capital needed, to offer from time to time new stock to its stockholders on favorable terms, for it believes this method of financing will provide the money needed for the business cheaply and with more certainty in good times and bad than any other.
>
> The safety of principal and regular dividends have been the compelling motives that have led to the widespread ownership of the stock of the Company. At the end of the year there were

423,580 stockholders, an increase during the year of 24,459. No one of these stockholders owns as much as one per cent of the capital stock. The nation-wide ownership of the American Telephone and Telegraph Company means ownership of the Bell System, for, taking the associated operating telephone companies as a group, the American Telephone and Telegraph Company owns 93 per cent. of their common stock, and in the case of the Western Electric Company, Inc., it owns 98 1/3 per cent. of the stock. Dividends paid to the American Telephone and Telegraph Company by these companies, together with profits earned from its long-distance lines, are used for the payment of the regular dividends to the American Telephone and Telegraph Company stockholders and the protection of their investment. There is, in effect, one profit paid by the System and that profit is not and should not be large. The aim of the management — and it is the only aim that will protect in the long run the safety of the investment of the hundreds of thousands of stockholders — is to continue to furnish the best possible telephone service at the least cost to the public. Extra or special dividends are entirely inconsistent with this aim and would be unsound. Earnings must, of course, be sufficient to permit the best possible telephone service at all times and to provide a reasonable payment to stockholders with an adequate margin to insure financial safety. Earnings in excess of these requirements will either be spent for the enlargement and improvement of the service furnished, or the rates charged for the service reduced. This is fundamental in the policy of the management.

During the past five years construction expenditures for additions, betterments and replacements have amounted to $1,800,000,000. During the next five years it is expected that further expansion of the telephone business, as well as further improvements in the service, will require the expenditure for construction of approximately $2,000,000,000. In spite of the increasing complexity of the business that necessarily results from this process of expansion year by year, it is expected, due in no small measure to the policy outlined above, that this program can be carried out without an increase in the cost to the public of telephone service.

This does not mean, however, that adjustments in rates will not have to be made where revenues are less than adequate. It cannot be expected that the business in those sections will be carried on by earnings from other sections. It is obvious that each section of the Bell System should earn enough in good times and bad to be able to give satisfactory telephone service and

provide telephone facilities to meet the growth of the country. Beyond that the Bell System has no incentive for profit. Up to that point it must earn in order to furnish telephone service on an American basis to the American people.

Next, under the heading "Progress in 1927," is given a detailed statement of work accomplished, occupying nearly five full pages of the report. A few pertinent extracts therefrom follow:

The gross operating revenues of the Bell System for 1927 were $894,699,000 or an increase of 8.7 per cent. over the previous year. At the same time the average investment in plants devoted to furnishing service increased 10 per cent. . . .

* * * *

The average time from an application for a telephone to its installation has been further reduced about one-half day . . .

* * * *

A new type of telephone having the receiver and transmitter on a single handle was made available during the year. . . .

* * * *

The transatlantic service, which was inaugurated in January, 1927, between New York City and London subscribers, was extended during the succeeding two months to all of the United States, Scotland and Wales . . . Early in 1928 transatlantic service began to be extended to various cities of continental Europe.

* * * *

The first demonstration of television over telephone circuits was made in April, 1927, by the Bell Telephone Laboratories between New York and Washington. Television by radio was also demonstrated between the development laboratory at Whiffany, New Jersey, and New York City.

* * * *

The year just past has, we hope, been gratifying alike to the millions of Bell telephone users and the hundreds of thousands of stockholders. The accomplishments have given real satisfaction to the personnel to whose loyal and efficient efforts they are due. Results to be satisfactory must meet the approval of ali three of these groups. Then and only then can progress be considered real and permanent.

Page 13 gives the names of employees receiving Theodore N. Vail medals and awards.

Pages 14 and 15 contain the balance sheet of the American Telephone and Telegraph Company as at December 31, 1927.

The comments under each item are worthy of some attention. See Form 294.

FORM 294

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

BALANCE SHEET, DECEMBER 31, 1927

ASSETS

Stocks of Associated Companies Investment, at cost, in stocks of associated telephone companies. See page 17. Increase during year $173,951,632.	$1,347,823,005.80
Stocks of Other Companies Investment, at cost, in stocks of affiliated and subsidiary companies other than Associated Companies. See page 17. Increase during year $442,367.	80,342,690.38
Bonds and Notes of, and Advances to, Associated Companies Temporary financing of Associated Companies for the extension of their telephone properties, including also $1,341,000 investment in bonds. Decrease during year $15,234,366.	202,449,711.82
Notes of, and Advances to, Other Companies Loans and advances to affiliated and subsidiary companies. Decrease during year $620,800.	9,075,000.00
Long Lines Plant and Equipment Cost of long-distance plant and equipment for providing inter-connection between and through territories of Associated Companies. Increase during year $31,801,091.	215,248,143.77
Office Furniture and Fixtures Cost of office equipment other than that included in Long Lines Plant and Equipment.	1,202,905.02
Accounts Receivable Current receivables, including dividends, interest, tolls and other items.	14,270,713.48
Temporary Cash Investments Funds temporarily invested in municipal, state and U. S. Government short-term obligations in anticipation of financial requirements.	58,463,853.57
Cash Cash and deposits in banks available for current requirements.	20,814,033.59
Total Assets	$1,949,690,057.43

FORM 294 *(Continued)*

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

BALANCE SHEET, DECEMBER 31, 1927

LIABILITIES

Capital Stock ..... Par value of capital stock outstanding. Increase during year $39,087,800. See page 18.	$1,103,415,600.00
Capital Stock Installments..... Installments paid on stock subscribed for but not yet issued. See page 18.	38,873,600.49
Funded Debt ..... Face value of debt obligations in the form of bonds and debentures. Decrease during year $1,092,500. See page 18.	384,097,900.00
Bills Payable ..... Note sold to Trustee of Pension Fund.	624,269.48
Dividend Payable January 16, 1928..... Dividend declared for last quarter of 1927.	24,826,783.50
Accounts Payable ..... Current accounts for supplies, services, etc.	5,719,145.21
Interest and Taxes Accrued, Not Due..... Interest and taxes accrued but not due and payable until a later date.	13,236,526.01
Reserve for Employees' Benefit Fund..... Provision for accident and sickness disability benefits, pensions and death benefits.	6,902,030.21
Reserves for Depreciation and Contingencies..... Provision for the ultimate retirement of plant and equipment used up in furnishing telephone service, and provision for contingencies. Decrease during year $2,540,816.	99,558,220.68
Surplus (Including Capital Stock Premiums)..... Total accumulated surplus, including $49,177,778 received in excess of par value for capital stock. Increase during year, $83,440,079, comprising:	272,435,981.85
Net Income carried to Surplus..... $31,234,976	
Special and non-recurring dividend from Western Electric Company, Inc..... 47,938,865	
Premiums on capital stock issued during year 4,292,715	
Less Miscellaneous Deductions (net).. *26,477*	
Total Liabilities	$1,949,690,057.43

C. A. HEISS, *Comptroller*

Page 16 presents the statement of earnings and expenses, shown in Form 295; also the auditor's certificate shown in Form 296.

Form 295

American Telephone and Telegraph Company

Statement of Earnings and Expenses for the Year Ending December 31, 1927

Earnings

Dividends	$ 99,956,734.63
Dividends on stocks owned, except special and non-recurring dividend of $47,938,865 from Western Electric Co., Inc.	
Interest	15,998,396.45
Interest on notes and advances, on bonds owned, and on temporary cash investments and bank deposits.	
Telephone Operating Revenues	99,866,791.04
Revenues under contracts for furnishing instruments and services, and revenues from operation of the long-distance lines.	
Miscellaneous Revenues	702,902.28
Total	$216,524,824.40
Expenses	66,140,929.57
Expenses incurred in conducting the business, including depreciation and taxes.	
Net Earnings	$150,383,894.83
Deduct Interest	21,768,984.71
Interest on bonds, debentures and other indebtedness.	
Net Income	$128,614,910.12
Deduct Dividends	97,379,934.00
Dividends at the rate of $9.00 per share per annum on capital stock.	
Balance Net Income carried to Surplus	$ 31,234,976.12
Add special dividend from Western Electric Co., Inc.	47,938,865.00
Non-recurring dividend paid during year representing profits accumulated over a period of years in activities apart from its business with Bell System telephone companies.	
Total carried to Surplus	$ 79,173,841.12
Average number of shares of capital stock outstanding during year	10,932,420
Net earnings per share available for dividends (after interest charges and excluding special Western Electric dividend)	$11.76

C. A. Heiss, *Comptroller*

FORM 296

AUDITOR'S CERTIFICATE

LYBRAND, ROSS BROS. & MONTGOMERY

Accountants and Auditors
110 William Street
New York

February 6, 1928

We have audited the accounts of the American Telephone and Telegraph Company for the year ended December 31, 1927, and have reviewed reports for that year rendered to the company by the associated and directly controlled companies.

We certify that the balance sheet and income statement as published herewith are in accordance with the books, and, in our opinion, set forth correctly the financial position of the American Telephone and Telegraph Company as at December 31, 1927 and the results of its operations for the year 1927.

LYBRAND, ROSS BROS. & MONTGOMERY.

Page 17 lists the company's holdings of stocks, bonds and notes of, and advances to, associated and other companies, December 31, 1927.

Page 18 shows (*a*) changes in capital stock outstanding during 1927, (*b*) changes in capital stock instalments during 1927, and (*c*) changes in funded debt outstanding during 1927.

Page 19 presents statistics of growth in number of stockholders and net earnings per share available for dividends during the past 10 years.

Pages 20 to 23, inclusive, present the balance sheet and income statement of the Bell System. See Forms 297 and 298.

Pages 24 and 25 give statistics of the Bell System securities outstanding in hands of the public.

Pages 26 to 30 present miscellaneous graphs and statistics.

BELL SYSTEM FINANCIAL STATEMENTS

The Bell System Balance Sheet and Income Statement which follow consolidate the accounts of the American Telephone and

Telegraph Company and its twenty-four associated operating telephone companies, all inter-company duplications being excluded from the combined figures. The accounts of the Western Electric Company, Inc., The Bell Telephone Company of Canada and of subsidiary and connecting companies in which either the American Telephone and Telegraph Company or its associated telephone companies have investments are not consolidated. The investments in these companies are included in the accompanying Balance Sheet under the item Investments, and dividends and interest received from them are included in the Income Statement under Non-Operating Revenues.

Form 297

Bell System Balance Sheet, December 31, 1927

(Inter-Company Duplications Excluded)

Assets	
Telephone Plant — Plant and equipment used in furnishing telephone service; comprised of land and buildings, rights of way, poles, wire, cable, underground conduit, switchboards, telephones, etc. Increase during year $230,962,061	$3,013,985,120
General Equipment, Tools and Supplies — Materials and supplies, office furniture and fixtures, automobiles, tools, etc. Increase during year $2,553,574.	76,395,240
Investments — Investments in stocks and bonds of, and advances to, subsidiary and connecting companies and in miscellaneous property. These investments include stocks of Western Electric Company, Inc., The Bell Telephone Company of Canada, etc. Increase during year $1,236,491.	169,944,923
Receivables — Current accounts receivable from telephone subscribers, and amounts receivable from connecting companies and others.	94,537,207
Temporary Cash Investments — Funds temporarily invested and held available for conversion into cash as needed.	58,463,854
Cash — Cash and deposits in banks available for current requirements.	44,140,967
Total Assets	$3,457,467,311

Note: All items of intangible assets carried in the accounts of Bell System companies are excluded from the Bell System Balance Sheet through a corresponding reduction in the Surplus.

FORM 297 *(Continued)*

BELL SYSTEM BALANCE SHEET, DECEMBER 31, 1927

(Inter-Company Duplications Excluded)

LIABILITIES

Capital Stock (Including Installments)		$1,351,939,840
Par value of capital stock outstanding in hands of public, including installment payments of $38,896,500 on stock not yet issued. Increase during year $39,058,656.		
Common Stock		
American Telephone and Telegraph Company	$1,103,415,600	
Associated Companies	99,024,793	
Preferred Stock		
Associated Companies	110,602,947	
Installments		
American Telephone and Telegraph Company	38,873,600	
Associated Companies	22,900	
Funded Debt		919,789,700
Face value of funded indebtedness outstanding in hands of public. Decrease during year $1,733,300.		
Mortgage Bonds		
Associated Companies	$535,631,470	
Collateral Trust Bonds		
American Telephone and Telegraph Company	158,746,400	
Associated Companies	414,330	
Debenture Bonds		
American Telephone and Telegraph Company	224,997,500	
Bills Payable		7,046,158
Notes sold to Trustee of Pension Fund and other short-term obligations payable within one year.		
Accounts Payable		63,597,120
Current bills for supplies, services, etc.		
Accrued Liabilities Not Due		91,115,456
Interest, taxes, rents, etc., accrued but not due and payable until a later date.		
Employees' Benefit Funds		35,103,647
Provisions for accident and sickness disability benefits, pensions and death benefits.		
Surplus and Reserves		988,875,390
Combined surplus and reserves of Bell System companies invested in the telephone business. Increase during year $148,892,896.		
The item Surplus and Reserves is comprised of:		
Reserves for Depreciation of Plant and Equipment	$600,663,640	
Reserves for Contingencies	91,258,481	
Surplus (including Capital Stock Premiums)	296,953,269	
Total Liabilities		$3,457,467,311

Form 298

Bell System Income Statement for Year Ending December 31, 1927

(Inter-Company Duplications Excluded)

Exchange Revenues — Revenues from local exchange service.	$604,266,112
Toll Revenues — Revenues from long-distance and local toll service.	271,174,270
Miscellaneous Revenues — Revenues derived from directory advertising and miscellaneous sources.	19,258,791
Total Operating Revenues	$894,699,173
Current Maintenance — Cost of inspection, repairs and rearrangements required to keep the telephone plant and equipment in good operating condition, representing 4.9 per cent. of the cost of the average plant in service during the year.	$139,456,582
Depreciation Expense — Provision to meet loss of investment when telephone property is retired from service, based on rates of depreciation for the different classes of property which spread this loss of investment uniformly over its service life. Depreciation expense during 1927 represented 5 per cent. of the cost of the average depreciable plant in service.	141,758,926
Traffic Expenses — Expenses incurred in the handling of telephone calls; principally operators' wages.	203,049,940
Commercial Expenses — Expenses incurred in business relations with subscribers, keeping subscribers' accounts, rendering bills for service, making collections, directories, advertising, pay station commissions, etc.	79,412,964
General and Miscellaneous Expenses — Expenses of the Executive, Accounting, Financial and Legal Departments, insurance premiums, sickness, accident and death benefits, pensions and other items of general expense incurred in operating the properties.	43,017,342
Total Operating Expenses	$606,695,754
Net Operating Revenues	$288,003,419
Uncollectible Revenues — Revenues earned which, based on experience, cannot be collected.	$ 5,711,964
Taxes — Federal, state and local taxes applicable to the year's operations.	76,012,254
Operating Income (Carried forward)	$206,279,201

FORM 298 *(Continued)*

BELL SYSTEM INCOME STATEMENT FOR YEAR ENDING DECEMBER 31, 1927

Operating Income (Brought forward)		$206,279,201
Non-Operating Revenues—Net		21,887,749
Dividends and interest received from investments in the Western Electric Company, Inc. (except special non-recurring dividend of $47,938,865 received during the year and shown below), The Bell Telephone Company of Canada, and in subsidiary and connecting companies; interest on bank balances and temporary cash investments, minor rent revenues and other miscellaneous non-operating income.		
Total Gross Income		$228,166,950
Rents and Miscellaneous Deductions		$ 11,596,350
Mainly rentals paid for the use of buildings, poles, conduits and other facilities.		
Interest Deductions		50,511,448
Interest charges on funded debt and other debt obligations, including amortization of debt discount.		
Total Deductions		$ 62,107,798
Net Income		$166,059,152
Dividends		$112,401,125
To holders of common stock of American Telephone and Telegraph Co.	$97,379,934	
Associated Companies	7,714,927	
To holders of preferred stock of Associated Companies	7,306,264	
Balance Net Income carried to Surplus		$ 53,658,027
Add special non-recurring dividend from Western Electric Company, Inc. (See page 16)		47,938,865
Total carried to Surplus		$101,596,892

4. Annual Report of General Motors Corporation

The annual report of General Motors Corporation for 1927 begins by listing names of officers and directors. There are seventeen vice presidents. The finance committee consists of thirteen members and the executive committee of nine members. The transfer offices are indicated, also the names and addresses of the registrars. Page 2 lists the names of the directors, thirty-two in number.

Pages 3-12, inclusive, contain President Sloan's statement to the stockholders, "by order of the Board of Directors." It is countersigned by Pierre S. du Pont, Chairman. Significant excerpts follow:

The year 1926 established what at that time was a new record in the number of cars manufactured and sold, as did the previous year 1925. The year 1927 resulted in still a new record for General Motors. There were manufactured and sold at retail to users at home and abroad, through branches, distributors and dealers, 1,554,577 cars. This exceeded the previous record year, 1926, by 338,751 cars or an increase of 27.9%. It is particularly interesting to note at this point that due to unusual circumstances prevailing during the year under review the total production of passenger cars and trucks for the United States and Canada declined 20.7% as compared with the previous year. The Corporation's sales, excluding all inter-company items, amounted to $1,269,519,673, an increase of $211,366,335 or 20.0% over the previous year.

* * * *

Previous annual reports have pointed out the substantial increases in the capital and surplus account of General Motors Acceptance Corporation. During the year under review further expansion became necessary and the General Motors Corporation made an additional investment of $12,500,000. The capital, surplus and undivided profits of General Motors Acceptance Corporation as of December 31, 1927 was $52,156,676. As has been stated in previous reports, the importance of General Motors Acceptance Corporation in promoting the sale of General Motors products cannot be emphasized too strongly. Also, as previously stated, its financial position and standing as a banking institution is unquestioned and has resulted from a strict adherence to sound principles as well as from the highly efficient manner in which

it has been managed. A detailed statement showing the financial position of General Motors Acceptance Corporation is presented on page 19.

* * * *

The operations of this [Yellow Manufacturing] Company in which the Corporation has a substantial interest have been unsatisfactory during the year. Shortly after the Corporation made its investment in this Company it was recognized that a complete reconstruction of this Company's products and manufacturing facilities was essential. Therefore, a program was laid down that provided, among other things, for the concentration of its manufacturing operations which were then divided between Chicago and East Moline, Illinois, and Pontiac, Michigan, into a new plant located at Pontiac, Michigan. This new plant, practically completed at the close of the year under review, will provide this Company with unequalled facilities with which it should be able to manufacture its products at a very high degree of efficiency and effectiveness. The products of the Company are also being revamped so that they will have a proper relation to each other, and will be in a position to effectively meet competition. This changing of models and reconstruction of plants, together with more or less of a revamping of the organization itself, has resulted in a substantial loss for the year which, under the circumstances, could hardly have been avoided. The Corporation feels, however, that with the program that has been outlined, a substantial foundation of earning power will be developed in course of time which will result in a reasonable return on the investment that the Corporation has made in this Company's securities.

* * * *

This [employees' savings] plan was adopted in 1919 and has been modified in detail as experience has justified. It now provides that employees may make monthly or semi-monthly payments to the Employees Savings Fund not to exceed 20% of their wages and not to exceed an annual total of $300. For each dollar put into this fund by an employee, the Corporation puts fifty cents into the Employees Investment Fund which is credited to the employee over a period of five years. Employees have the right to withdraw their savings from the Savings Fund, plus interest, but if they withdraw before the end of five years, they are subject to certain forfeitures in respect to the Corporation's contribution to the Investment Fund except that the savings may be applied to the payment of homes without losing any benefits of the plan whatsoever. Since this plan has been established, 12,956 employees

have utilized it to assist in the buying and building of homes. It is interesting to note that 125,808 employees, or 83.5% of those eligible, are participants in the Savings Fund Class formed for the year 1927.

At the end of 1927, the fourth class, which was that of 1922, matured and as a result there was paid to 9,432 employees, the following:

On account of their savings	$1,229,020
On account of 6% interest on savings	462,933
On account of amount accumulated in the Investment Fund, representing accumulation on account of contributions made by the Corporation five years ago (this amount is represented by 25,085 shares of common stock of the Corporation at market value at the time of distribution plus the extra dividend of $2.50 per share paid January 3, 1928)	3,524,442*
This makes a total value of	$5,216,395

An employee who paid in $300 during the year 1922 received in January, 1928, on maturity, cash and securities having a market value of $1,277. This was made possible due to the fact that through the investment of the Corporation's contribution in common stock of the Corporation the employee became, in a measure, a partner in the success of the Corporation's activities in which he plays a part.

* * * *

During the year 1927 the same policies have been continued that made 1925 and 1926, in turn, the most successful years which the Corporation had theretofore enjoyed. It is impossible to point out any specific act or principle which has been predominant in producing the results herein recorded. On the contrary, it has unquestionably resulted from meeting each problem as it arose and dealing with that problem with an open mind and without prejudice, and by looking forward as far as possible, recognizing at all times that the position of the Corporation cannot even be maintained, let alone improved, without constant progress in all phases of its extensive operations. Such results would also have been impossible without the capitalization of the best thought of the entire organization on the various problems as they arose, supported by the complete loyalty and intense effort of all concerned.

It is the purpose of this report to record such important events as occurred during the year under review as will be of interest to

* NOTE: This amount is not the same as shown in Employees Savings and Investment statement on page 24, because that statement shows cost of stock to Corporation, whereas this amount represents the market value of said stock at time of distribution as stated.

the stockholders, and not to forecast or discuss prospects for the year 1928.

Page 13 presents the certificate of the auditors, Form 299.

Page 14 presents the condensed consolidated income account (Form 300); page 15, the surplus account (Form 301), and pages 16-17, the balance sheet (Form 302).

FORM 299

AUDITOR'S CERTIFICATE

HASKINS & SELLS
Certified Public Accountants

Executive Offices, 30 Broad Street, New York

Offices in the Principal Cities of the United States of America and in London, Paris, Berlin, Shanghai, Manila, Montreal, Havana, Mexico City

Cable Address "Hasksells"

General Motors Corporation
Broadway at 57th Street
New York

We have made a general examination of your accounts for the purpose of verifying the stated financial condition at December 31, 1927, and of reviewing the operations for the year ended that date, and have satisfied ourselves as to the general correctness of the accounts. As to certain foreign assembly plants where our examinations have not been completed, we have accepted the Corporation's reports.

We have verified the provision for your Federal income tax liability for the year 1927, but have made no study of the existing situation with respect to tax adjustments applicable to prior years, inasmuch as you have a special department to handle such tax matters.

We have not examined the minutes of your governing bodies.

WE HEREBY CERTIFY that, subject to the above, the accompanying Condensed Consolidated Balance Sheet, December 31, 1927, and related Summaries of Income and Surplus for the year ended that date, in our opinion, are correct.

(Signed) HASKINS & SELLS.

New York, February 16, 1928.

Form 300

Condensed Consolidated Income Account

	Year Ended Dec. 31, 1927	Year Ended Dec. 31, 1926
Profit from operations and investments, after all expenses incident thereto, but before depreciation of real estate, plants and equipment	$328,893,358.62	$243,141,474.63
Provision for depreciation of real estate, plants and equipment	26,928,657.89	20,259,973.51
Net Profit from operations and investments	$301,964,700.73	$222,881,501.12
Less: Provision for:		
Employees' bonus	$ 10,488,071.53	$ 8,274,099.29
Amount due Managers Securities Company	10,488,071.53	8,274,099.29
Employees' savings and investment fund	7,214,661.93	3,461,992.43
Special payment to employees under stock subscription plan	40,412.00	32,984.00
Interest on Fisher Body notes	—	304,644.01
	$ 28,231,216.99	$ 20,347,819.02
	$273,733,483.74	$202,533,682.10
Less: Provision for United States and foreign income taxes	34,468,759.22	25,834,939.06
Net Income	$239,264,724.52	$176,698,743.04
General Motors Corporation Proportion of Net Income	$238,319,009.48	$176,085,144.55
Seven per cent preferred stock dividends	$ 8,850,590.50	$ 7,352,290.74
Six per cent preferred stock dividends	104,911.50	116,928.00
Six per cent debenture stock dividends	153,828.00	176,068.50
	$ 9,109,330.00	$ 7,645,287.24
Amount Earned on Common Stock	*$229,209,679.48	*$168,439,857.31

* Note: Adding the General Motors Corporation's equity in the undivided profits of General Motors Acceptance Corporation (100%), Yellow Truck & Coach Manufacturing Co. (57%), Ethyl Gasoline Corporation (50%), General Exchange Insurance Corporation in 1927 (100%), Vauxhall Motors, Limited, in 1927 (100%) and Fisher Body Corporation (60% prior to June 30, 1926, after which time the earnings are consolidated), the amount earned on the common stock is $225,995,495.76 $178,585,895.00

Form 301

Surplus Account

	Year Ended Dec. 31, 1927	Year Ended Dec. 31, 1926
Surplus at beginning of year	$ 89,341,318.47	$119,020,472.84
General Motors Corporation proportion of Net Income, as per Income Account	238,319,009.48	176,085,144.55
Addition arising through adjustment of the holdings in Fisher Body Corporation, prior to acquisition of minority interest, to the net asset value thereof as at June 30, 1926	—	27,727,439.41
Addition arising through acquisition of the balance of the common stock of Fisher Body Corporation not already owned (minority interest) for which there was paid 638,401 shares original issue and 26,319 shares out of treasury of General Motors Corporation common stock	—	23,084,542.30
Capital surplus arising through sale above par of 250,000 shares of seven per cent preferred stock	4,104,166.75	—
Capital surplus arising through exchange of six per cent debenture and six per cent preferred stock for seven per cent preferred stock	75,375.00	107,100.00
This amount transferred to reserve for sundry contingencies by order of the Board of Directors	75,375.00	107,100.00
Total	$331,764,494.70	$345,917,599.10
Surplus capitalized through issuance of 2,900,000 shares of common stock at $50 per share as a stock dividend of one-half share for each share of common stock outstanding, paid September 11, 1926	—	145,000,000.00
	$331,764,494.70	$200,917,599.10
Less cash dividends paid or accrued:		
Seven per cent preferred stock	$ 8,850,590.50	$ 7,352,290.74
Six per cent preferred stock	104,911.50	116,928.00
Six per cent debenture stock	153,828.00	176,068.50
	$ 9,109,330.00	$ 7,645,287.24
Common stock:		
March 12 ($2.00 on 8,697,876 shares in 1927)	$ 17,395,751.75	$ 9,032,270.68
June 13 ($2.00 on 8,698,302 shares in 1927)	17,396,603.00	9,032,284.93
July 5 ($2.00 extra on 8,698,302 shares in 1927)	17,396,603.00	*20,645,219.00
Sept. 12 ($2.00 on 8,698,562 shares in 1927)	17,397,123.00	15,212,666.23
Dec. 12 ($1.25 on 17,400,000 shares in 1927)	21,750,000.65	15,219,994.88
($2.50 extra on 17,400,000 shares in 1927, payable Jan. 3, 1928)	43,500,000.00	*34,788,557.67
	$134,836,081.40	$103,930,993.39
Total cash dividends paid or accrued	$143,945,411.40	$111,576,280.63
Surplus at end of year	$187,819,083.30	$ 89,341,318.47

* Note: July 2, 1926, there was paid $4.00 extra per share and January 4, 1927, $4.00 extra per share.

Form 302

General Motors Corporation

Condensed Consolidated Balance Sheet as of December 31, 1927 and 1926

Assets

	Dec. 31, 1927	Dec. 31, 1926
Current and Working Assets:		
Cash in banks and on hand	$ 132,272,217.73	$117,825,372.05
United States Government securities	75,542,697.94	12,840,580.65
Other marketable securities	361,282.00	4,732,433.44
Sight drafts with bills of lading attached, and C.O.D. items	14,649,097.20	12,073,433.68
Notes receivable	1,560,677.71	1,895,576.92
Accounts receivable and trade acceptances, less reserve for doubtful accounts (in 1927, $2,293,437.10; in 1926, $1,716,036.96)	31,646,088.89	27,707,286.38
Inventories at cost or market, whichever is lower	172,647,715.62	156,203,663.15
Prepaid expenses	3,600,345.42	3,059,866.96
Total Current and Working Assets	$ 432,280,122.51	$336,338,213.23
Fixed Assets:		
Investment in affiliated and miscellaneous companies not consolidated	$ 98,262,013.86	$ 79,715,822.88
General Motors Corporation stocks held in treasury (in 1927, 428,193 shares common $29,956,247.84; 11,140 shares 7% preferred $1,381,786.53)	31,338,034.37	19,491,738.97
Real estate, plants and equipment	480,473,508.46	434,373,903.49
Deferred expenses	12,436,188.01	7,404,422.37
Goodwill, patents, etc.	43,687,708.37	43,570,004.95
Total Fixed Assets	$ 666,197,453.07	$584,555,892.66
Total Assets	$1,098,477,575.58	$920,894,105.89

Liabilities, Reserves and Capital

Current Liabilities:	Dec. 31, 1927	Dec. 31, 1926
Accounts payable	$ 51,828,549.12	$ 48,221,294.10
Taxes, payrolls and sundry accrued items not due	27,236,070.41	29,723,532.81
United States and foreign income taxes	35,224,309.20	30,324,496.79
Accrued dividends on preferred and debenture stock	1,567,218.63	1,274,714.63

FORM 302 (*Continued*)

GENERAL MOTORS CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEET AS OF DECEMBER 31, 1927 AND 1926

Extra dividend on common stock, payable Jan. 3, 1928 (for 1926, payable Jan. 4, 1927)	43,500,000.00	34,788,557.67
Total Current Liabilities	$ 159,356,147.36	$144,332,596.00
Reserves:		
Depreciation of real estate, plants and equipment	$ 141,872,939.54	$123,892,340.01
Employees' investment fund	6,316,320.00	2,856,797.50
Employees' savings fund*	14,933,833.65	—
Bonus to employees	11,715,710.51	8,520,447.42
Sundry contingencies	3,943,565.78	4,613,921.28
Total Reserves	$ 178,782,369.48	$139,883,506.21
Capital Stock:		
Seven per cent preferred stock† (authorized $500,000,000)	$ 130,835,700.00	$105,333,200.00
Six per cent preferred stock (authorized and outstanding)	1,713,400.00	1,795,900.00
Six per cent debenture stock (authorized and outstanding)	2,366,900.00	2,786,900.00
Common stock $25 par value (in 1927 authorized 30,000,000 shares. Issued and outstanding 17,400,000 shares)	435,000,000.00	435,000,000.00
Total Capital Stock	$ 569,916,000.00	$544,916,000.00
Interest of minority stockholders in subsidiary companies with respect to capital and surplus	2,603,975.44	2,420,685.21
Surplus	187,819,083.30	89,341,318.47
Total Capital Stock and Surplus	$ 760,339,058.74	$636,678,003.68
Total Liabilities, Reserves and Capital	$1,098,477,575.58	$920,894,105.89

* Reserve for employees' savings fund includes classes maturing December 31, 1929, to December 31, 1932, after providing an amount in "Taxes, payrolls and sundry accrued items not due" to meet probable withdrawals during 1928. Classes maturing December 31, 1927 and 1928, are also included in "Taxes, payrolls and sundry accrued items not due." At December 31, 1926, all classes of the employees' savings fund were included in "Taxes, payrolls and sundry accrued items not due."

† The Seven Per Cent Preferred Stock is preferred as to assets and dividends over all other stocks of the Corporation under charter amendment adopted June 16, 1924.

Page 18 gives a detailed list of investments in affiliated and miscellaneous companies.

Page 19 presents the balance sheet of General Motors Acceptance Corporation.

Page 20 contains a record of earnings for the years 1909-1927, inclusive.

Page 21 presents a record of dividend payments.

Page 22 lists sales of cars and trucks over a period of years.

Page 23 lists overseas sales, 1922-1927, inclusive; also investments in preferred stock of the company by employees, 1924-1928, inclusive.

Page 24 gives statistics relating to the employees' savings and investment funds.

Page 25 contains statistics on payrolls, employees, stockholders and bonus awards.

Pages 26-31, inclusive, contain data relating to affiliated and miscellaneous companies.

5. Annual Report of the B. F. Goodrich Company

Illustrative of a brief and compactly written annual report is that of the B. F. Goodrich Company for the year 1926, reproduced in Form 303. Certain matter not part of the statements is omitted.

FORM 303

ANNUAL REPORT OF THE B. F. GOODRICH COMPANY

THE B. F. GOODRICH COMPANY

1780 BROADWAY, NEW YORK

February 14, 1927.

To the Stockholders of
The B. F. Goodrich Company:

The audited and certified accounts of your Company covering operations for the fiscal year ended December 31, 1926, and showing the financial position as of that date, are hereto attached.

Net Sales for the year, of the parent Company and its subsidiaries, amounted to $148,391,478.00, as compared with $136,239,526.00 for the corresponding period of 1925.

After making full provision for depreciation, bad and doubtful debts, and all other known losses, and after deducting interest on borrowed money, there remained Net Profits of $5,065,110.00. Our earnings for 1926 were adversely affected because of the rapid decline in the prices of crude rubber during the early part of the year, necessitating downward revisions in selling prices. This condition was general throughout our industry.

Your Company is adequately covered for its raw material requirements at prices approximating current market quotations.

In accordance with the provisions of the Company's Charter, the Directors have voted, subject to your approval, at a meeting called for that purpose, to retire 11,880 shares of its Preferred Stock, 6,044 shares of which were in the Treasury as at the close of the year, the balance of 5,836 shares having been purchased since January 1, 1927.

For the Directors,
BERTRAM G. WORK, *President.*

CERTIFICATE OF ACCOUNTANTS
STAGG, MATHER & COMPANY
PUBLIC ACCOUNTANTS
141 Broadway
NEW YORK CITY

February 14, 1927.

To the President and Board of Directors of
The B. F. Goodrich Company:
Dear Sirs:

We have examined the books and accounts of The B. F. Goodrich Company (a New York Corporation) and its Subsidiary Companies for the fiscal year ended December 31, 1926, and certify that the annexed Balance Sheet and relative Surplus and Profit and Loss Accounts for the period are in accordance therewith, subject to the exclusion from both sides of the Balance Sheet of the value of Patents, Trade-marks and Goodwill.

We have examined the Securities and verified the Cash on Hand and have seen certificates from the depositories in support of the funds and securities held by them.

We are satisfied that due provision has been made for Doubtful Accounts and Bills Receivable; that the valuations of the Partly Manufactured and Finished Goods and Supplies do not exceed cost; that Crude Rubber and Fabrics have been priced at cost or market, whichever was lower on December 31, 1926; that the Deferred Charges represent expenditures properly chargeable to future operations; and that due care has been exercised to include all known liabilities.

The average commitment prices for goods under contract for future delivery are approximately the same as market at December 31, 1926.

We verified the additions to the Plant Accounts and satisfied ourselves that they represent legitimate capital charges and that due provision has been made for depreciation.

The Preferred Stock in Treasury, together with 5,836 shares acquired in 1927, has been designated by the Board of Directors for cancellation to comply, as of July 1, 1927, with the requirements of the redemption provision of the Certificate of Incorporation.

AND WE CERTIFY that, in our opinion, subject to the above, the annexed Balance Sheet is properly drawn up so as to show the true financial position of the Company on December 31, 1926, and that the relative Profit and Loss and Surplus Accounts are correct.

STAGG, MATHER & COMPANY.

THE B. F. GOODRICH COMPANY

(A New York Corporation)
AND SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET
DECEMBER 31, 1926

ASSETS

Current Assets:		
Cash in Banks and on Hand	$ 6,690,357.35	
United States Liberty Loan Bonds	61,800.00	
Trade Notes and Accounts Receivable after deducting Reserve to cover Doubtful Accounts, Discounts and Allowances	26,778,367.34	
Other Notes and Accounts Receivable and Sundry Advances	853,561.93	
Raw Materials and Supplies, Partly Manufactured and Finished Stock	28,494,692.41	$ 62,878,779.03
Due from Employees on Account of Purchase of Common Stock, and Treasury Common Stock (Employees' Stock deposited with Company as Collateral)		858,082.01
6,044 Shares of 7% Cumulative Preferred Stock in Treasury, at Par		604,400.00
Investments and Advances to Other Companies		7,593,197.99
Tangible Capital Assets:		
Real Estate, Buildings, Machinery and Sundry Equipment, less Reserve of $13,737,715.48 for Depreciation and Obsolescence		34,565,974.47

THE B. F. GOODRICH COMPANY
(A New York Corporation)
AND SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET—(*Continued*)
DECEMBER 31, 1926

Intangible Capital Assets:			
This Balance Sheet does not take into account the Capital Asset of Goodwill on the books amounting to $57,798,000.00, nor the Patents or Trade-marks carried on the books at $1.00, but shows the condition of the Company on the basis of Tangible Capital Assets.....			
Deferred Charges to Future Operations:			
Serial Note Discount, Prepaid Insurance, Interest, Taxes, Etc.....			795,171.39
			$107,295,604.89
LIABILITIES			
Current Liabilities:			
Bills Payable (issued by Foreign Subsidiary Companies)		$ 1,130,096.07	
Accounts Payable.....		4,229,608.03	
Sundry Accrued Liabilities		1,174,576.65	
Provision for Federal Income Tax.....		90,370.47	$ 6,624,651.22
5% Serial Gold Notes...			15,000,000.00
$5,000,000.00 due (and paid) January 15, 1927			
$5,000,000.00 due January 15, 1928			
$5,000,000.00 due January 15, 1929			
25-Year 6½% First Mortgage Gold Bonds			
Due July 1, 1947:			
Issued		$25,000,000.00	
Deduct—Bonds Redeemed and cancelled .....$ 1,950,000.00			
Deduct — Bonds in Treasury	5,500.00	1,955,500.00	23,044,500.00

Reserves:			
From Surplus — for Contingencies in connection with Affiliated Company acquired		$ 1,700,000.00	
For Pensions.....		600,000.00	
Miscellaneous (Including Rentals Received in Advance Applicable to Future Years).....		251,555.82	2,551,555.82
Capital Stock and Surplus:			
7% Cumulative Preferred Stock—			
500,000 Shares issued at $100.00 each...$50,000,000.00			
Deduct — 137,160 Shares redeemed and cancelled....	13,716,000.00	$36,284,000.00	
50,000 Shares of 7% Cumulative Preferrred Stock of the par value of $100.00 each, authorized and unissued .....$ 5,000,000.00			
Common Stock—			
Authorized 750,000 Shares of no par Value			
Outstanding 601,710 Shares $60,131,000.00			
Less — Exclusion of Intangible Capital Assets; namely, Patents, Trademarks, and Goodwill, per contra...	57,798,001.00		
	$ 2,332,999.00		
Earned Surplus per annexed Statement..	21,157,479.62	23,490,478.62	
Employees' net credits on subscriptions to Stock not yet issued		300,419.23	60,074,897.85
			$107,295,604.89

THE B. F. GOODRICH COMPANY
(A New York Corporation)
AND SUBSIDIARY COMPANIES

Profit and Loss Account for the Year Ended December 31, 1926

NET SALES		$148,391,478.22
DEDUCT:		
Manufacturing, Selling and General Administration Expenses, less $5,000,000.00 Contingency Reserve existing at December 31, 1925		138,640,094.23
		$ 9,751,383.99
ADD:		
Miscellaneous Income		770,289.24
		$ 10,521,673.23
DEDUCT:		
Provision for Depreciation	$2,481,102.47	
Interest on Gold Bonds, Serial Notes, Bills Payable, Etc	2,975,460.55	5,456,563.02
Transferred to Surplus Account		$ 5,065,110.21

THE B. F. GOODRICH COMPANY
(A New York Corporation)
AND SUBSIDIARY COMPANIES

Surplus Account
December 31, 1926

Balance January 1, 1926		$24,770,124.70
ADD:		
Surplus previously appropriated for Amortization of War Facilities		1,225,063.73
Net Profit transferred from annexed Profit and Loss Statement		5,065,110.21
Difference between cost and par value of Preferred Treasury Stock purchased for redemption		13,875.00
		$31,074,173.64
DEDUCT:		
7% Dividend on Preferred Stock (Nos. 56, 57, 58 and 59) for the year ended December 31, 1926	$2,560,670.00	

Dividend of $4.00 per share on Common Stock (Nos. 27, 28, 29 and 30) for the year ended December 31, 1926	2,406,240.00	
Difference between cost of Affiliated Company acquired and value of its Net Assets	3,187,279.06	
Federal Income and Profits Tax and Interest paid applicable to prior years	1,762,504.96	9,916,694.02
Surplus carried to Balance Sheet		$21,157,479.62

6. Quarterly Reports to Stockholders

Some corporations issue quarterly reports to stockholders, the purpose being, as a rule, to keep them informed as to earnings, but other information may be included in the quarterly report.

Forms 304 and 305 are statements issued by General Electric Company to its stockholders.

Form 306 was issued to stockholders on the reverse side of a statement accompanying dividend checks.

Form 307 is the quarterly report of the Utah Copper Company.

Form 308 is the quarterly statement mailed by the United State Steel Corporation to stockholders being enclosed with dividend checks.

Form 304

Statement of General Electric Company to Its Stockholders

General Electric Company
Schenectady, N. Y., July 15, 1926

To the Stockholders of
General Electric Company.

Orders received by the Company have been as follows

	1926	1925	Increase
3 months ended June 30	$ 78,972,062	$ 66,468,992	19%
6 months ended June 30	$165,405,720	$150,315,228	10%

OWEN D. YOUNG
Chairman Board of Directors
GERARD SWOPE
President

Form 305

Statement of General Electric Company to Its Stockholders

To the Stockholders of
General Electric Company

General Electric Company
Schenectady, N.Y., October 28, 1927

Orders received by the Company have been as follows

	1927	1926	Decrease
3 months ended September 30	$77,420,263	$81,587,917	5%
9 months ended September 30	233,076,091	246,993,637	6%

Earnings for nine months ended September 30 have been as follows

	1927	1926
Net sales billed	$225,959,610.89	$229,638,216.24
Less. Cost of sales billed, including operating, maintenance and depreciation charges, reserves and provision for all taxes	198,796,918.11	203,690,908.97
Net income from sales	$ 27,162,692.78	$ 25,947,307.27
Other income, less interest paid and sundry charges	8,030,361.92	5,818,364.60
Profit available for dividends	$ 35,193,054.70	$ 31,765,671.87
Less Cash dividends on special stock	1,930,813.50	1,714,052.10
Profit available for dividends on common stock (7,211,481 $\frac{84}{100}$ shares issued)	$ 33,262,241.20	$ 30,051,619.77

The 120th dividend on common stock and the 20th dividend on special stock are paid on this date.

By order of the Board of Directors,
OWEN D. YOUNG, Chairman
GERARD SWOPE, President

Form 306

American Steel Foundries

CONSOLIDATED INCOME ACCOUNT

For the Nine Months Ending September 30, 1927

Earnings from operations, after deducting Manufacturing, Selling and Administrative Expense and Federal Taxes		$3,900,504.97
Deduct—		
Depreciation		757,106.94
Net profit from operations		3,143,398.03
Miscellaneous income—		
Interest, Discount and Exchange, etc.	$104,128.89	
From Investments	276,670.23	
		380,799.12
Total profit and income		3,524,197.15
Deduct—		
Net Earnings of Subsidiary Company appertaining to Outstanding Minority Stockholdings		20,645.75
Net income carried to surplus		$3,503,551.40

The fiscal year ends December 31st, and above results are subject to a final audit of accounts at that time.

FORM 307

UTAH COPPER COMPANY

SEVENTY-NINTH QUARTERLY REPORT
COVERING THE FOURTH QUARTER
OF 1927

New York, February 16, 1928.

To the Stockholders of

UTAH COPPER COMPANY:

Herewith is submitted the operating statement of Utah Copper Company for the fourth quarter of the fiscal and calendar year 1927.

The total net production of copper from all sources for the quarter is shown below, in comparison with the output for the first, second and third quarterly periods of 1927:

1927	Net Pounds Copper Produced	Average Monthly Production
Fourth Quarter.....	55,620,084	18,540,028
Third Quarter.....	55,573,703	18,524,568
Second Quarter.....	60,056,091	20,018,697
First Quarter.....	61,752,783	20,584,261

During the quarter the Arthur Plant treated 1,643,400 dry tons of ore and the Magna Plant 1,653,200 dry tons, a total for both plants of 3,296,600.

The average grade of ore treated at the mills was .98% copper and the average mill recovery of copper in the form of concentrates was 88.79% of that contained in the ore, as compared with .97% copper and 90.01% recovery, respectively, for the previous quarter.

The average cost per pound of net copper produced, including depreciation of plant and equipment and all fixed and general expenses, and after crediting gold, silver and miscellaneous earnings, was 7.4 cents, as compared with 7.7 cents for the preceding quarter, computed on the same basis.

The following tabulation shows the financial results of the Company's operations for the quarter as compared with previous quarters:

	Fourth Quarter 1927	Third Quarter 1927	Second Quarter 1927	First Quarter 1927
Net profit from copper production	$3,092,900.29	$2,744,479.54	$2,896,224.23	$2,749,516.83
Miscellaneous income, including gold and silver	565,872.10	515,081.53	591,203.60	723,420.26
Income from investments	857,631.38	857,631.37	857,631.38	531,118.88
Total income	$4,516,403.77	$4,117,192.44	$4,345,059.21	$4,004,055.97
Depreciation	303,668.50	313,184.55	313,391.44	311,701.87
To surplus	$4,212,735.27	$3,804,007.89	$4,031,667.77	$3,692,354.10

Respectfully,

D. C. JACKLING, *President.*

L. S. CATES, *Vice-President and General Manager.*

Form 308

Statement of

U. S. Steel Corporation and Subsidiary Companies

For the Quarter Ending December 31, 1926.

EARNINGS

	Earnings before charging Interest on the Subsidiary Cos.' Bonds outstanding	*Less: Interest on the Subsidiary Cos.' Bonds outstanding*	*Balance of Earnings**
October, 1926	$19,668,676	$ 676,262	$18,992,414
November, 1926	18,820,788	676,132	18,144,656
December, 1926	17,041,125	675,670	16,365,455
	$55,530,589	$2,028,064	
Total Earnings after deducting all expenses incident to operations, comprising those for ordinary repairs and maintenance of plants, also taxes (including reserve for Federal income taxes), and interest on bonds of the subsidiary companies			$53,502,525
Less, Charges and Allowances for Depletion and Depreciation, applied as follows:			
To Depletion and Depreciation Reserves and Sinking Funds on Bonds of subsidiary companies	$15,201,474		
To Sinking Funds on U. S. Steel Corporation Bonds		2,786,745	
			17,988,219
Net Income			$35,514,306

Deduct: Interest for the quarter on U. S. Steel Corporation Bonds outstanding	$ 4,255,608	
Premium on Bonds redeemed	361,734	
		4,617,342
Balance		$30,896,964
Add, Net Balance of sundry receipts and charges, including adjustments of various accounts		253,720
Total		$31,150,684
Dividends on stocks of the U. S. Steel Corporation, viz.:†		
Preferred, 1¾%	$ 6,304,920	
Common, 1¾%	8,895,294	
		15,200,214
Surplus for the quarter		$15,950,470
Balance of Surplus for nine months ending September 30, 1926		39,832,768
		$55,783,238
Less, Amounts appropriated and expended, or to be expended, account of additions, improvements or betterments to plants and properties		30,000,000
Balance of Surplus for year		$25,783,238

* These amounts may be changed somewhat upon completion of audit of accounts for the year. The Corporation's fiscal year corresponds with the calendar year, and complete annual report comprising general balance sheet, financial statements, statistics, etc., will be submitted at the annual meeting in April, 1927, or earlier.

W. J. FILBERT,
Comptroller.

†Dividends Payable:
Preferred, Feb. 26, 1927; to stockholders of record Jan. 29.
Common, Mar. 30, 1927; to stockholders of record Feb. 28.

UNFILLED ORDERS ON HAND

December 31, 1926.....3,960,969 Tons

DIVIDEND CHECK ENCLOSED, WHICH PLEASE CASH IMMEDIATELY

2. Reports to Promote Management

7. Nature of Internal Reports

Internal reports may be classified under two groups, viz.:

1. Accounting
2. Statistical
3. A combination of these

Such reports may be either periodical or occasional. Most accounting reports are periodical because they are compiled to show results of operations over a period—a day, week, month or year. Exceptions to the rule are found in reports of special investigations made by accounting firms to ascertain fraud, the feasibility of mergers, and so on. To a certain extent the reports to managers may coincide with reports to stockholders, but managers require much more detailed information relative to current daily, weekly and monthly operations than do stockholders. It is unusual to issue other than annual and quarterly reports to stockholders, and most corporations do not issue quarterly reports to them. On the other hand, efficient management is possible only when adequate reports are available relative to all phases of operations measured in terms of the shortest practicable period of time. This is for some purposes one day; for others one week; for still others, one month; and for yet others, one year.

The general plan of internal reports depends on the plan of organization. Reports are made by subordinate to superior officers, the extent of integration depending on the size, character and plan of organization. Most of the details which are interesting to department heads must be eliminated from reports to chief executives, only summarized information essential to the formulation of general plans and policies being retained. Their time is too limited to enable them to give adequate attention to undigested details. In case of need for greater details in a specific instance the data from which the summarized report was prepared may be called for.

With the understanding that modifications are necessary to meet special requirements of each concern, the following are submitted as being suggestive of the character of daily, weekly, and monthly reports:

1. Daily reports:
   (*a*) Orders received, number and amount.
   (*b*) Shipments made.

(*c*) Cash receipts and disbursements; balance on hand.
(*d*) Inventories by departments.

2. Weekly reports:
   (*a*) Orders received, number and amount.
   (*b*) Total orders received since beginning of fiscal year, number and amount.
   (*c*) Shipments made since beginning of fiscal year.
   (*d*) Unfilled orders.
   (*e*) Production for week.
   (*f*) Production to date since beginning of fiscal year.
   (*g*) Machine hours, normal and actual.
3. Monthly reports:
   (*a*) Orders received, number and amount. These may be required separately for the different products.
   (*b*) Business done by sales districts.
   (*c*) Production by departments.
   (*d*) Profits and losses by departments.
   (*e*) Inventories by departments.
   (*f*) Depreciation schedules.
   (*g*) Expenditures on plant.
   (*h*) Labor turnover.
   (*i*) Goods in process.
   (*j*) Statistical comparison with preceding months.

It is obvious that many other matters than those outlined above may require consideration in managerial reports. Reports on the status of bank loans, commercial paper outstanding, seasonal variations, forecast of business conditions and other subjects may be in order.

8. To Whom Reports Are Made

In the ascending order of authority, reports, according to their nature, are made to:

1. Foremen
2. Superintendents
3. Credit Manager
4. Works Manager
5. Controller
6. Secretary
7. Treasurer
8. Vice President
9. President
10. Board of Directors

3. Reports to State Officers and Other Governing Bodies

9. Annual Reports to State

The nature of reports required by states from domestic corporations and foreign corporations doing business within their boundaries depends upon the requirements of the state laws. The provisions of the Illinois corporation law relative to filing reports are as follows:

Sec. 102. . . . The Secretary of State shall on or before the 15th day of January of each year forward to each corporation of record in his office a copy of the forms to be used in making the report specified in this Act, but the failure to send or to receive such forms shall not relieve the corporation from the duty of making such report.

Sec. 104. It shall be unlawful for the Secretary of State to accept or file an annual report of any corporation after the first day of March of any year without first collecting from such corporation a fee of twenty dollars, which shall be in addition to all other fees or taxes prescribed by this Act. In addition thereto such corporation shall be liable to the penalties hereinafter prescribed.

Sec. 151. If any officer of a corporation required by this Act to make a report under oath to the Secretary of State, shall in such report wilfully and knowingly make any false statement, he shall be guilty of perjury.

Sec. 153. Any corporation failing to file its annual report within the time required by this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars.

The object in requiring an annual report from each corporation doing business within its boundaries is to enable the state to secure the information needed for regulatory and tax purposes.

Form 309 is the report required of foreign corporations in New Jersey.

Form 310 is the report required of domestic corporations in New Jersey.

Form 311 is the report required of foreign corporations in Illinois.

Form 312 is the report required of domestic corporations in Illinois.

Form 313 is the affidavit to accompany the annual report in Illinois.

These forms are presented for illustrative purposes only, since requirements differ among the states.

Other reports may be required by the secretary of state for the following:

1. Increase of capital stock.
2. Issuance of stock within authorized amount.
3. Application for reinstatement.
4. Amendment to articles of incorporation other than change in capital stock.
5. Change of address of corporation.
6. Withdrawal of foreign corporations.
7. Change of agent against whom process may be served.
8. Tax returns of various kinds.
9. Dissolution.

Form 309

NEW JERSEY

Annual Report of Officers and Directors by Foreign Corporation

Chapter 124 of the Laws of 1900

Annual Report by a.....Corporation

The ..... Company

Organized under the laws of the State of.....

The corporation above named, organized under the Laws of the State of....., does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto.

First—The name of the corporation is.....

.....

Second—The location of the registered office is at No.....

Street, ... and .....

is the agent upon whom process may be served.

Third—The character of the business is.....

.....

FOURTH—The amount of the authorized capital stock is $.....
The amount actually issued and outstanding is $.....

FIFTH—The names and addresses of all Directors and Officers, and the term when the office of each expires, are as follows:

Names of Directors	Address	Expiration of Term.
OFFICERS: President, Vice-President, 2nd Vice-President, Treasurer, Secretary,		

SIXTH—The next annual meeting of the stockholders for election of Directors is appointed to be held on.....

WITNESS our hands the.....day of.....A. D. 192...

.....President.

.....Secretary.

ANNUAL REPORT FOR 192

of the

.....

..... Company,

organized under the laws of the

State of.....

Directors, Officers, &c.

Filed....., 192...

.....

Secretary of State.

FORM 310

NEW JERSEY

ANNUAL REPORT OF OFFICERS AND DIRECTORS BY DOMESTIC CORPORATION

Chapter 124 of the Laws of 1900
ANNUAL REPORT BY A DOMESTIC CORPORATION

The ..... Company
Organized and Registered under the Laws of the State of New Jersey.

The corporation above named, organized and registered under the Laws of the State of New Jersey, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the various acts amendatory thereof and supplemental thereto.

FIRST—The name of the corporation is.....
.....

SECOND—The location of the registered office is at No..... street, ...and.....is the agent upon whom process may be served.

THIRD—The character of the business is.....
.....

FOURTH—The amount of the authorized capital stock is $..... The amount actually issued and outstanding is $.....

FIFTH—The names and addresses of all the Directors and Officers, and the term when the office of each expires, are as follows:

Names of Directors	Address	Expiration of Term
OFFICERS:		
President,		
Vice-President,		
2d Vice-President,		
Treasurer,		
Secretary,		

SIXTH—The next annual meeting of the stockholders for election of Directors is appointed to be held on.....

SEVENTH—The name of the corporation has been at all times displayed at the entrance of its registered office in this State, and the corporation has kept at its registered office in this State a transfer-book, in which the transfers of stock are made, and a stock-book, containing the names and addresses of the stockholders and the number of shares held by them respectively, open at all times to the examination of the stockholders as required by law.

WITNESS our hands the.....day of.....A. D. 192...

.....President.

.....Secretary.

ANNUAL REPORT FOR 19

OF THE

.....

..... Company,

organized under the laws of the State of New Jersey

Directors, Officers, etc.

Filed....., 192...

.....

Secretary of State.

FORM 311

ILLINOIS

Notice: This report is required to be filed between the first day of February and the first day of March of each year, and severe penalties are prescribed for failure to do so. Report cannot be filed later than the first day of March without enforcement of penalties prescribed by statute.

FOREIGN CORPORATION

ANNUAL REPORT

To HON. LOUIS L. EMMERSON,

Secretary of State of the State of Illinois:

Report of.....

(Give present exact corporate name)

.....

organized under the laws of the State of....., as required under an Act entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919.

1. State your name and official position with the corporation. (Whether president, vice-president, secretary, assistant secretary, receiver, assignee or trustee.)

.....
.....
.....

2. State briefly the nature of the business in which the corporation is actively engaged under its charter at the present time.

.....
.....
.....

3. The location of the principal business office of the corporation in the State of Illinois is at No..... Street, in the City of ....., County of....., and the names and residences of the officers and directors of said corporation are as follows:

NAMES OF OFFICERS AND DIRECTORS

Name	Office	Residence Number, Street, City, State	Term of office Expires
	President		
	Vice-President		
	Secretary		
	Asst. Secretary		
	Treasurer		
	Director		
	Director		
	Director		
	Director		
	Director		
	Director		
	Director		

4. Has the corporation acquired title to any real estate in securing any debt or liability due it. Ans.....

5. Give a description of such property, if any has been acquired, and the date of its acquisition and disposal of such property.

.....
.....
.....
.....
.....
.....

6. Has the corporation entered into any illegal pool trust, agreement, combination, confederation or understanding in restraint of trade in contravention of any Act of this State concerning such matters? Ans.....

7. State the amount of the authorized capital stock of the corporation. Ans.....

*8. Does the corporation wish to pay a franchise tax based upon its entire authorized capital stock? Ans.....

*9. In the event that the corporation is assessed a franchise tax upon its entire authorized capitalization, will it be paid promptly? Ans.....

10. Give the total value of all the property of the corporation everywhere, specifying:

(a) Value of the patent rights, licenses, trade-marks, secret processes, copyrights, good will, contracts or choses in action; Ans. $.....

(b) Merchandise, raw materials and goods in process of manufacture; Ans..... $.....

(c) Book accounts and notes; Ans. $.....

(d) Machinery and real estate; Ans..... $.....

(e) Stock in other corporations and securities; Ans. $.....

(f) Furniture, fixtures, stationery, etc.; Ans..... $.....

(g) Cash in bank; Ans. $.....

(h) Kinds and amounts of other property, such as equipment, right-of-way, trackage, rolling stock, telegraph and telephone lines, pipe lines, etc.; Ans..... $.....
$.....
$.....
$.....

11. Give the total value of all the property of the corporation located in Illinois, specifying:

(a) Value of the patent rights, trade-marks, secret processes, copyrights, good will, contracts or choses in action; Ans. $.....

(b) Merchandise, raw materials and goods in process of manufacture; Ans..... $.....
(c) Book accounts and notes; Ans. $.....
(d) Machinery and real estate; Ans..... $.....
(e) Stock in other corporations and securities; Ans. $.....
(f) Furniture, fixtures, stationery, etc.; Ans..... $.....
(g) Cash in bank; Ans. $.....
(h) Kinds and amounts of other property, such as equipment, right-of-way, trackage, rolling stock, telegraph and telephone lines, etc.; Ans..... $.....
$.....
$.....

12. Give the location of the principal places of business of the corporation in each State, and the amount of the business transacted through each last year.....
.....
.....
.....
.....
.....

13. State the total business of the corporation transacted everywhere during the past year. $.....

14. State the total business of the corporation for the past year transacted by it at or from places of business in the State of Illinois. $.....

15. In case of a telegraph, telephone, cable, railroad, or pipe line company, state the total length of such telegraph, telephone. cable, railroad, or pipe line company, wherever located.....
.....

16. State the length of such telegraph, telephone, cable, railroad, or pipe line company actually located in Illinois. .....

In Witness Whereof, I have hereunto set my hand and caused the seal of said corporation to be affixed, this.....day of .....A. D. 19....

STATE OF ILLINOIS, }
.....County, } ss.

(ATTACH CORPORATE SEAL HERE)

.....

(President, Vice-President, Secretary, Assistant Secretary, Assignee, Receiver or Trustee.)

I, ..., being duly sworn, declare on oath that I am.....of the corporation mentioned in the foregoing report, and that the statements therein made are true.

.....

Subscribed and sworn to before me this.....day of .....A. D. 19....

.....

(NOTARIAL SEAL) *Notary Public.*

*In case answers to Nos. 8 and 9 show that the corporation is willing to pay upon its entire authorized capitalization, it is unnecessary to give information called for in subsequent paragraphs relating to the property and business of such corporation.

Corporations domestic or foreign having all of their business and tangible property in this State are required under the statute to pay upon their entire authorized capitalization, as all of their capital stock is represented in this State.

Therefore, in order to be relieved of the trouble and expense of compiling the data necessary to give the information called for in paragraphs 10 to 16 inclusive of the annual report, they should answer paragraphs 8 and 9 thereof in the affirmative.

§ 102. . . . . The Secretary of State shall on or before the 15th day of January of each year forward to each corporation of record in his office a copy of the forms to be used in making the report specified in this Act, but the failure to send or to receive such forms shall not relieve the corporation from the duty of making such report. . . . .

§ 104. It shall be unlawful for the Secretary of State to accept or file an annual report of any corporation after the first day of March of any year without first collecting from such corporation a fee of twenty dollars, which shall be in addition to all other fees or taxes prescribed by this Act. In addition thereto such corporation shall be liable to the penalties hereafter prescribed.

§ 151. If any officer of a corporation required by this Act to make a report under oath to the Secretary of State, shall in such report wilfully and knowingly make any false statement, he shall be guilty of perjury.

§ 153. Any corporation failing to file its annual report within the time required by this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

Box..... File.....

FOREIGN CORPORATION

ANNUAL REPORT
OF
.....
.....
.....
Located at.....
.....

DO NOT SEND ANY FEE WITH THIS REPORT.

FORM 312

ILLINOIS

NOTICE—Unless this report is filed prior to March first 10% must be added to the amount of franchise taxes otherwise due, and corporation is also subject to a fine not to exceed $1,000.00. Only one copy of report is required to be forwarded to the Secretary of State. See that the report is properly executed and corporate and notarial seals affixed before mailing, as failure to do so may necessitate the return of the report and subject the corporation to the above penalties.

ANNUAL REPORT

(USE TYPEWRITER IN MAKING THIS REPORT)

To LOUIS L. EMMERSON.

Secretary of State of the State of Illinois:

(Do not write in this space)
Date Paid .....
In't'l Fee $.....
Fran. Fee $.....
Penalty - - $.....

Report of.....

(Give present exact corporate name)

.....

organized under the laws of the State of....., as required under an Act entitled, "An Act in relation to corporations for pecuniary profit," approved June 28, 1919, in force July 1, 1919, and all acts amendatory thereof.

1. State your name and official position with the corporation. (Whether president, vice-president, secretary, assistant secretary, receiver, assignee or trustee.)

2. The location of the principal business office of the corporation in the State of Illinois is at No..... Street, in the City of ....., County of....., and the names and residences of the officers and directors of said corporation are as follows:

NAMES OF OFFICERS AND DIRECTORS

NAME	OFFICE	RESIDENCE Number and Street City State
	President	
	Secretary	
	Treasurer	
	Director	
	Director	
	Director	
	Director	
	Director	

NOTICE—Must give officers and show management of corporation is vested in at least three Directors.

3. Has the corporation acquired title to any real estate in securing any debt or liability due it? Ans.....

4. Give a description of such property, if any has been acquired, and the date of the acquisition and disposal of such property.

.....

.....

5. Has the corporation entered into any illegal pool, trust, agreement, combination, confederation or understanding in restraint of trade in contravention of any Act of this State concerning such matters? Ans.....

6. State the amount of AUTHORIZED CAPITAL STOCK of corporation. $.....
Shares of no par value No.....
When a corporation has shares of no par value such shares must be reported separately.

*7. Does the corporation wish to pay a franchise tax based upon its entire authorized capital stock? Ans.....

*8. In the event that the corporation is assessed a franchise tax upon its entire authorized capitalization, will it be paid promptly? Ans.....

NOTICE—The information on this perforated rider is for compiling certified list of corporations and must be answered specifically and accurately.

Exact corporate name is.....

Address .....
(Number and Street) (City) (State)

Authorized Capital Stock { $.....
Number of shares of no par value....

President .....
(Name) (Number and Street) (City) (State)

Secretary .....
(Name) (Number and Street) (City) (State)

DO NOT TOTAL THE ITEMS ON THIS PAGE

9. State briefly the nature of business in which the corporation is actively engaged under its charter at the present time.

10. Give the total value of all the property of the corporation everywhere, specifying:

(a) Value of patent rights, licenses, trade-marks, secret processes, copyrights, good will, contracts, or choses in action; Ans. $.....

(b) Merchandise, raw materials and goods in process of manufacture; Ans. $.....

(c) Book accounts and notes; Ans. $.....

(d) Machinery and real estate....Ans. $.....

(e) Stock in other corporations and securities; Ans. $.....

(f) Furniture, fixtures, stationery..Ans. $.....

(g) Cash in bank; Ans. $.....

*See page 845 for footnote.

(h) Kinds and amounts of other property, specifying in detail; Ans. $.....
$.....
$.....

11. Give the total value of all the property of the corporation located in Illinois, specifying:

(a) Value of the patent rights, trade-marks, secret processes, copyrights, good will, contracts or choses in action;
Ans. $.....
(b) Merchandise, raw materials and goods in process of manufacture; Ans. $.....
(c) Book accounts and notes; Ans. $.....
(d) Machinery and real estate.....
Ans. $.....
(e) Stock in other corporations and securities;
Ans. $.....
(f) Furniture, fixtures, stationery.....
Ans. $.....
(g) Cash in bank; Ans. $.....
(h) Kinds and amounts of other property, specifying in detail; Ans. $.....
$.....
$.....

12. Give the location of the principal places of business of the corporation in each State, and the amount of business transacted through each, last year.....
.....
.....
.....
.....
.....

13. State the total business of the corporation transacted everywhere during the past year.
Ans. $.....

14. State the total business of the corporation for the past year transacted by it at or from places of business in the state of Illinois.
Ans. $.....

15. In case of a telegraph, telephone, cable, railroad, or pipe line company, state the total length of such telegraph, telephone, cable, railroad or pipe line, wherever located.....
.....

16. State the length of such telegraph, telephone, cable, railroad or pipe line actually located in Illinois.....
.....

17. From what office are the affairs of the corporation managed?
Ans.

18. To what office or offices are all contracts with the corporation forwarded for final acceptance?
Ans.

19. Is the corporation actually transacting business at the present time in the State where it was incorporated?
Ans.

20. At what office or offices are directors' and stockholders' meetings held? Ans.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of said corporation to be affixed, this.....day of .....A. D. 192...

(AFFIX CORPORATE
SEAL HERE)

.....
(President, Vice-President, Secretary, Assistant Secretary, Treasurer, Assignee, Receiver or Trustee)

STATE OF ILLINOIS, } ss.
.....County, }

I, ..., being duly sworn, declare on oath that I am.....of the corporation mentioned in the foregoing report, and that the statements therein made are true.

.....

Subscribed and sworn to before me this.....day of .....A.D.192...

.....
Notary Public.

(NOTARIAL SEAL)

---

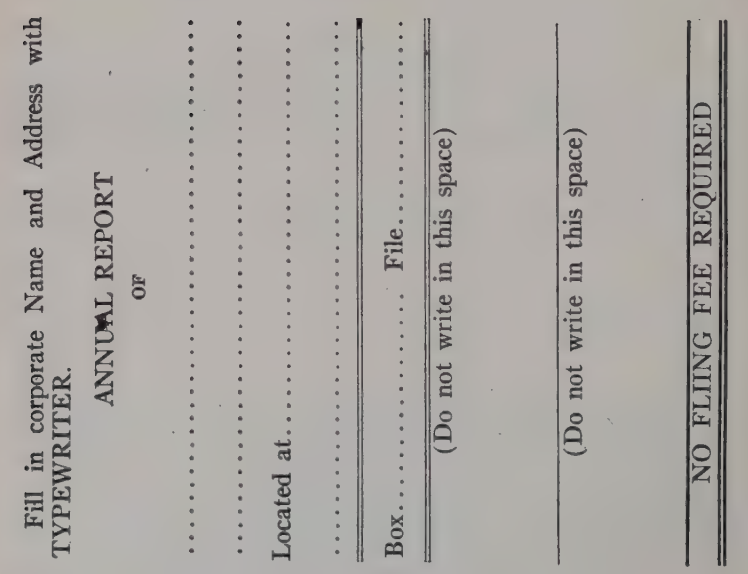
*Corporations having all their tangible property and business in this State are required under the Statute to pay upon their entire authorized capital stock and should answer paragraphs 7 and 8 in the affirmative, as this will relieve them of the expense and trouble of giving the information called for in paragraphs 10 to 20 inclusive, which would be of no benefit to either the corporation or the State. Other corporations should give the detailed information

called for in paragraphs 10 to 20 inclusive, in order that the Secretary of State may be able to ascertain the correct amount of franchise tax and initial fees due from them.

§ 102. . . . . The Secretary of State shall on or before the 15th day of January of each year forward to each corporation of record in his office a copy of the forms to be used in making the report specified in this Act, but the failure to send or to receive such forms shall not relieve the corporation from the duty of making such report.

§ 151. If any officer of a corporation required by this Act to make a report under oath to the Secretary of State, shall in such report wilfully and knowingly make any false statement, he shall be guilty of perjury.

§ 153. Any corporation failing to file its annual report within the time required by this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.



FORM 313

AFFIDAVIT

THIS AFFIDAVIT MUST BE ATTACHED TO AND ACCOMPANIED BY THE ANNUAL REPORT.

AFFIDAVIT

STATE OF ILLINOIS,)
COUNTY OF) ss.

I, _____, do solemnly swear that I am the _____

(president, vice-president, secretary, assistant secretary or treasurer) of the corporation known and styled

_____ duly incorporated under the laws of _____

and I do further solemnly swear that said corporation was unable to file report between the first day of February and the first day of March of this year as required by the provisions of the General Corporation Act of this State owing to _____

_____

_____

_____

_____

_____

(President, Vice-President, Secretary, Assistant Secretary & Treasurer.)

Subscribed and sworn to before me this _____ day of _____ A. D. 19__

_____

Notary Public.

[NOTARIAL SEAL]

NOTE: In the blank space be sure to make out a prima facie case by giving the exact cause for the reason that the corporation was unable to file report as defined in Section 104 of the General Corporation Act, which is printed on the back of this affidavit.

10. Blue Sky Law Reports

Many states have enacted so-called "blue sky laws" regulating the issuance and sale of securities. The purpose of such laws is to prevent the sale of wildcat securities to the public. Illustrative of reports required under these laws is that for officers and directors in Illinois (Form 314).

FORM 314

ILLINOIS

FOR OFFICERS AND DIRECTORS OF A CORPORATION PREPARED UNDER "THE ILLINOIS SECURITIES LAW."
Approved and in force June 10, 1919, as amended by Act approved June 11, 1921.
(Read Interrogatories carefully before filing blanks.)
(Use typewriter. Fill each blank.)

IN RE:.....NO.....

.....

.....

Give your full name, date and place of birth.....

.....

Business address .....

Residence address.....

Present occupation or profession.....

.....

Give detailed statement of occupation for past ten years with dates, names and addresses of employers and reasons for change of business or employment.....

.....

.....

.....

.....

.....

.....

.....

Are you an officer, director or employee of the above company?

.....

.....

Do you own stock in this company? If so, how many shares of each kind? What did you pay therefor and how?.....

.....

.....

.....

Do you own any other securities in this company? If so, state fully the kind and cost to you and how paid.....

.....

.....

What amount, if any, do you owe for said stock or securities?.....

.....

Have you any written contract for additional stock in this

company?.....
.....
If so, attach a true copy and mark it Exhibit "1."
Have you any verbal or secret agreement with any other officer whereby you are to obtain additional stock?.....
If so, attach a statement explaining fully your agreement, and mark it Exhibit "2."
What salary do you receive from this company?.....
Are you to receive commission on the sale of stock?.....
If so, how much?.....
Have you any contract or agreement for any per cent of profits, royalties, sales, bonus, commission or additional compensation?
If so, explain fully.....
.....
.....
.....
How much time do you devote to the business of the company?
.....
.....(Hours daily, weekly or monthly)
Has this company been refused authority to sell its securities in any State?.....If so, what States?.....
(Yes or No)
.....
Have you ever been or are you now an officer or director of any other company?.....If so, give names and addresses of each company.....
.....
.....
Give date of organization or incorporation of such business.....
.....
Is such business in operation?.....If a going concern, give names and addresses of officers and directors.....
.....
.....
.....
If discontinued, the reasons for such discontinuance.....
.....
.....
.....
Have you ever been charged with any fraudulent acts in any transaction of any kind or character?.....
If you answer "Yes" explain fully.....
.....

.....
.....
.....
.....
In what Court?.....
(Give County and State)
Who was the Judge presiding?.....
(Name and address of Judge)
.....
.....(Give title of the case and number).....
What was the result of litigation?.....
If judgment was obtained against you, have you paid such judgment? .....
.....
If case has not been settled or tried, explain.....
.....
.....
.....
.....
.....
Have you been charged with or convicted of the commission of any crime or crimes or confined in any State or other institution? If so, where and nature of charge or offense?.....
.....
.....
.....
.....
The above answers are given and statements made under the authority, requirements and provisions of "The Illinois Securities Law," approved and in force June 10, A. D. 1919, as amended by Act approved June 11, 1921.

STATE OF ILLINOIS, }
County of.....} ss.

I, ..., do solemnly swear that the foregoing answers and statements have been knowingly made by me and that the same are true.

Given under my hand this.....day of .....A. D. 19....

.....

Subscribed and sworn to before me in.....County, in the State of Illinois by the said.....
who personally appeared before me in the aforesaid County and

State this.....day of .....A. D. 19....

.....

(Notarial Seal.) Notary Public.

My commission expires.....

NOTE:—This must be executed in State of Illinois before an officer authorized to administer oaths. (See Section 27 of the Illinois Securities Law.)

XXII

BUDGETS

Budgetary control is the systematic planning of activities —disbursing funds, selling, purchasing, and so on. The budget is an outline and analysis of amounts to be expended, etc., in connection with future activities.

1. Procedure

To secure adequate budgetary control within a business it must be departmentized. Each department head is held responsible for the transmission of budgetary estimates to the officers in charge of budgets, also for the correct execution of budgetary provisions, affecting his own department after the budget is adopted. The budgetary officer prepares the budget from estimates submitted by the heads of departments.

At stated times during the year reports are prepared comparing performance with estimates. These may show the need of revising the original estimates.

2. Advantages of a Budget

Among the advantages of budgets are:

1. A well-defined goal is set for all.
2. Coordination between resources and expenditures is established.
3. Operations are made continuous, hence employment is better regulated.
4. Waste is reduced because somebody is made responsible for every expenditure.
5. Future activities are planned with a view to varying financial conditions.
6. Plans and results are made easily comparable.

3. Budgeting Plant Expenditures

The need of anticipating expenditures on plant is perhaps greater than in case of other expenditures, because if the fundamental ratios involved are thrown out of normal it is difficult to correct them.

One such ratio is that of investment in capital assets to sales, known as turnover on capital assets. It serves as a guide in preparing a budget for expenditures on plant.

Budgetary control must be planned with reference to these ratios. They must be watched continually if a concern is to be permanently successful.

A budget should assist in improving upon past results, as measured by the usual standards of achievement. Turnover on capital assets should be increased. The working capital position should be improved.

To accomplish improvements the three requisites are:

1. Determine the fundamental relationships under present conditions, as measured by such ratios as turnover on capital assets.
2. Determine what these relationships should be to give the desired results.
3. Plan the budget to bring the desired relationships into existence.

The work of preparing a budget for plant expenditures should be preceded by an analysis of the investment in plant. Such an analysis is best expressed in ratios and turnovers indicating present important relationships. Next, a study should be made of desirable changes and new ratios and turnovers worked out to accomplish them. Finally, detailed expenditures necessary to bring the desired changes into effect should be set up as a budget.

4. Budgeting Plant Expenses

Investments in capital assets result in a two-fold series of expenses: (1) interest cost of invested capital, and (2) expenses incident to repair and wear and tear of capital assets.

Repair expenses are those necessary to keep plant in good operating condition.

Depreciation expenses result from wear and tear, inadequacy, etc., of capital assets.

Since repairs and depreciation are expenses, complete budgetary control involves consideration of two types of budgets:

1. Expense budgets.
2. Budgets for capital expenditures, both additions and betterments, usually known as plant and equipment budgets.

5. Expense Budgets

The number of expense budgets required depends on the classification of expenses, which in turn should conform to the organization and activities of the business. Thus manufacturing expenses are those incidental to manufacturing processes, and selling expenses are those necessary to the marketing function.

Expenses of repair and replacement of capital assets are usually incidental to various activities, because capital assets must be employed to prosecute such activities.

Factors to be considered in classifying expenses are as follows:

1. Size of the business
2. Nature of the business
3. Plan of organization
4. Amount of business done
5. Personnel

Expenses are direct and indirect. Direct expenses are directly assignable to given functions, consequently to the departments performing those functions, as, salaries of laborers working on materials in production departments and of clerks in sales departments.

Indirect expenses are those which benefit more than one department and which consequently must be allocated on some reasonable basis to the departments benefitting.

Interest here extends only to the allocation of expenses

to departments; their further allocation to output being a problem in cost accounting.

For budgetary purposes expenses resolve themselves into three groups:

1. Operating
2. Selling
3. Administrative

Since expenses incidental to capital assets are usually incurred in all three of these functions, it is necessary, in budgeting expenses, to make such allocation of capital asset expenses to departments as will make possible charging to each of these primary functions its just proportion of such expenses.

6. Basis of Expense Allocation

The department serves as the basis for overhead allocation; hence in so far as possible the elements of overhead should be compiled on a departmental basis. Items of overhead not chargeable directly to departments must be allocated to departments arbitrarily.

Productive departments work directly on the product being manufactured; non-productive departments aid the productive process indirectly by supplying to productive departments things and services needed in their work. Illustrations of non-productive departments are: employment department, which secures needed recruits to the labor force, and the power department, which supplies power to operate machinery.

Costs of operating non-productive departments and indirect expenses not allocable directly to a given department because not incurred for the benefit of any one department, are treated similarly. They are allocated arbitrarily to the productive departments.

Below are listed some important indirect expenses. To the right are indicated possible bases for allocating these expense to productive departments.

Account	Basis of Distribution
Insurance—building	Floor space
Insurance—merchandise	Value of property
Repairs on building	Floor space
Depreciation of building	Floor space
Taxes on building	Floor space
Light	Candle power required
Heat	Cubic feet of space
Salaries of general Officers	Net sales
General Administrative expense	Net sales
Bad debts	Net sales

The first five expenses listed above arise from investments in capital assets.

7. Procedure for Expense Budget

The budget period having been determined in advance, the head of each department prepares an estimate of his department's expenses for this period based upon past operating results. This he gives to the officer in charge of budgets who acts as general supervisory officer. Subject to revision by the board of directors, these estimates serve as a basis for constructing the expense budget, which is finally made effective by a vote of the directors appropriating the funds necessary to carry it out. Monthly reports should be prepared showing the status of each appropriation. An appropriation should be exceeded only by consent of those finally responsible for the budget itself—the board of directors or the budget committee of the board. Any other arrangement would no doubt lead to confusion.

Since depreciation expense does not involve an immediate expenditure, it may not enter into the estimates for an expense budget, which is concerned only with current expenditures.

In preparing estimates of future expenses the work is expedited if the form used contains data permitting the comparison of the estimates with expenses incurred in past periods.

FORM 315

SUGGESTED FORM OF EXPENSE BUDGET

THE JONES MANUFACTURING COMPANY
EXPENSE BUDGET FOR YEAR ENDING—DECEMBER 31, 1926

Account	Expenses for year 1926	Estimated Expenses for year 1926	% increase or decrease	Average for past five years	Monthly Expenditures				
					Jan.	Feb.	Mar.	Apr.	Etc.

8. Classification of Expenditures on Plant

Expenditures, other than repairs, in connection with capital assets are divisible into three classes:

1. Replacements—to replace worn out equipment.
2. Betterments—to add to the future service value of assets.
3. Additions—for assets additional to those already owned.

Replacements, betterments and additions are capital expenditures, as distinguished from repairs, which is a revenue expenditure. However, replacements differ from betterments and additions in that, like repairs, they are made to maintain existing equipment, hence present capacity, whereas additions and betterments add to existing equipment, thus increasing its capacity.

Although both repairs and replacements are maintenance charges, repairs are a revenue expenditure while replacements are a capital expenditure. This is because repairs are charged direct to an expense account, while replacements are charged either to an asset account or to a depreciation reserve account.

In preparing budgets it is desirable to secure correlation between repairs and depreciation on the one hand and charges to replacements, betterment and additions on the

other hand. Thus if no depreciation has been written off hitherto, a replacement is properly regarded as a revenue expenditure. The expense accounts should be charged in one way or another, but not in both ways.

9. Plant and Equipment Budget

With the necessary accounting and statistical data at hand, preparation of the plant and equipment budget resolves itself into a consideration of content, form, use and responsibility for its preparation.

As to content, variation must be made to suit the conditions and requirements. In this connection, information which may be of use is:

1. Value of plant and equipment as at beginning of the period.
2. Amount of depreciation written off to date.
3. Estimated cost of plant and equipment to be purchased or constructed.
4. Estimated upkeep cost of this new plant and equipment.
5. Total depreciation and total repairs on both old and new equipment.

As to form, there must be variation to meet requirements. Any arrangement which sets out the information so as to permit comparison between old plant and equipment and additions required for the budgetary period, as well as repair and depreciation expense for such period, will suffice. If thought desirable, add a final column to show total book value of plant and equipment as at the end of the budgetary period. This is ascertained by deducting the depreciation applicable to the budgetary period from book value of old assets as at beginning of the period plus cost of additions.

As to use, compilation in the form suggested above facilitates the consideration of those who must approve it. Approval must be followed by appropriations required to carry out the provisions of the budget. Next, the budget must be put into execution in accordance with a plan requiring that all requisitions for expenditures be approved before the expenditures are made.

As to responsibility for preparation of the budget, the executive in charge of production must ascertain that that part applicable to his branch of activities is properly assembled. The office manager is held responsible for preparation of the estimates of expenditures for plant and equipment to be used in selling and administrative activities.

10. Statistical Data on Plant

A question arising when additions or betterments to plant are contemplated is, how far to go, considering the possibility of speeding up present facilities, but only at higher maintenance costs.

Here a detailed record of plant and equipment is helpful, making possible a thorough survey of facilities. The plant ledger should show, for each important unit of plant and equipment, date of purchase, original cost, depreciation written off, and present book value.

XXIII

BALANCE SHEET ANALYSIS

1. The Balance Sheet

Balance sheets, when properly constructed, express (*a*) facts and (*b*) relationships. They show how capital is secured and employed. Business success depends on (*a*) the correct derivation and (*b*) the correct use of capital, because its cost is a large part of the cost of doing business. Enterprises are handicapped by either (*a*) the unwise derivation or (*b*) the unwise expenditure of funds, especially funds for construction of plant. Funds expended on plant are practically irrecoverable except through sale, which may result in heavy loss. To a large degree the investment in stock-in-trade, receivables, and even cash is permanent, being part of the investment required by going concerns. There is this distinction, however, that the investment in plant cannot be reduced, whereas that in current assets, such as cash and receivables, may be altered with relative ease should the need of doing so arise.

Failure to secure sufficient capital leads to as serious consequences as does the investment of excessive amounts of capital.

Correct subdivision of the total investment among asset groups is an important problem. Hence, classification and analysis of the investment should guide the expenditure of funds on additions and betterments.

Balance sheets, when properly constructed, provide data for analytical work. Such analysis may deal exclusively with significant relationships set forth in the balance sheet, or it may necessitate comparing data presented in both balance sheet and statement of profit and loss.

2. Balance Sheet Construction

Some industrial concerns prefer to show fixed assets at the top, graduating downward with more liquid forms, ending at the bottom of the asset side with cash. A similar order is adopted for the liability side, long-term liabilities being placed at the top opposite fixed assets and following these, the current liabilities. Proprietorship is set out under current liabilities.

Many industrial concerns, however, have abandoned this arrangement in favor of balance sheets setting forth current assets and current liabilities at the top, especially for conveying information to bankers when short-term financing is under consideration. Note the form recommended by the Federal Reserve Board, Form 316.

Regardless of the arrangement adopted, there arises the problem of sub-classification of assets into significant groups. In every industrial balance sheet there are at least two subdivisions, namely:

1. Capital assets, and
2. Current assets.

In addition, there may be found other coordinate groups, principal among which are:

1. Securities, or investments
2. Deferred charges
3. Goodwill and other intangibles
4. Other assets

In the form of balance sheet recommended by the Federal Reserve Board "Securities" are included among current assets; frequently, however, they are given a separate classification coordinate with the primary groups, current and fixed assets, and so on.

A given balance sheet arrangement will not satisfy the requirements of all businesses and circumstances. The principles of analysis must be applied with reference to local and sometimes abnormal conditions, such as are constantly confronted in practice.

3. Profit and Loss Statement

Profit and loss statements show the sources of business revenue, the significant groups of expenses and costs of doing business, and the resultant effect on proprietorship. The balance sheet shows how capital is secured and expended. The profit and loss statement shows whence revenues are derived and what disposition is made of them. Complete analysis is possible only when information supplied by both balance sheet and profit and loss statement is available.

Money is invested in assets to produce profits. Amounts received as revenues and expended as costs and expenses must be related back to the investment, to keep a constant check on the effectiveness with which such investment is employed. Doing this necessitates throwing into readily comparable form significant amounts expressed in the balance sheet, on the one hand, and significant amounts expressed in the profit and loss statement, on the other hand.

For reference, the form of profit and loss statement recommended by the Federal Reserve Board is given in Form 317.

4. Method of Procedure

Procedure in analyzing accounting data is conditioned on (*a*) the information secured and (*b*) the data available. According to data available, analysis may be applied to:

1. A single balance sheet, or
2. Two balance sheets, or
3. A balance sheet and the income statement for the preceding period.

FORM 316

FEDERAL RESERVE BOARD FORM OF BALANCE SHEET

ASSETS

Cash:		
1a. Cash on hand—currency and coin	$0,000.00	
1b. Cash in bank	0,000.00	$0,000.00

Notes and accounts receivable:			
3. Notes receivable of customers on hand (not past due)	$0,000.00		
5. Notes receivable discounted or sold with indorsement or guaranty	0,000.00		
7. Accounts receivable, customers (not past due)	0,000.00		
9. Notes receivable, customers, past due (cash value $.....)	0,000.00		
11. Accounts receivable, customers, past due (cash value $.....)	0,000.00		
		$0,000.00	
Less—			
13. Provision for bad debts	$0,000.00		
15. Provision for discounts, freights, allowances, etc.	0,000.00	0,000.00	0,000.00
Inventories:			
17. Raw material on hand	$0,000.00		
19. Goods in process	0,000.00		
21. Uncompleted contracts	0,000.00		
Less—Payments on account thereof	0,000.00	$0,000.00	
23. Finished goods on hand		0,000.00	0,000.00
Other quick assets (describe fully):			
.....		0,000.00	
.....		0,000.00	0,000.00
Total quick assets (excluding all investments)			$0,000.00
Securities:			
25. Securities readily marketable and salable without impairing the business	$0,000.00		
27. Notes given by officers, stockholders, or employees	0,000.00		
29. Accounts due from officers, stockholders, or employees	0,000.00	0,000.00	0,000.00
Total current assets			$0,000.00
Fixed Assets:			
31. Land used for plant	$0,000.00		
33. Buildings used for plant	0,000.00		
35. Machinery	0,000.00		
37. Tools and plant equipment	0,000.00		
39. Patterns and drawings	0,000.00		
41. Office furniture and fixtures	0,000.00		
43. Other fixed assets, if any (describe fully)	0,000.00		
.....	0,000.00		
.....	0,000.00		
		$0,000.00	
Less—			
45. Reserves for depreciation	0,000.00		
Total fixed assets			$0,000.00

Deferred charges:		
47. Prepaid expenses, interest, insurance, taxes, etc..		0,000.00
Other assets (49)		0,000.00
Total assets		$0,000.00

Liabilities

Bills, notes, and accounts payable:		
Unsecured bills and notes—		
2. Acceptances made for merchandise or raw material purchased	$0,000.00	
4. Notes given for merchandise or raw material purchased	0,000.00	
6. Notes given to banks for money borrowed..	0,000.00	
8. Notes sold through brokers	0,000.00	
10. Notes given for machinery, additions to plant, etc.	0,000.00	
12. Notes due to stockholders, officers or employees	0,000.00	$0,000.00
Unsecured accounts—		
14. Accounts payable for purchases (not yet due)	$0,000.00	
16. Accounts payable for purchases (past due)..	0,000.00	
18. Accounts payable to stockholders, officers or employees	0,000.00	0,000.00
Secured liabilities—		
20a. Notes receivable discounted or sold with indorsement or guaranty (contra)	$0,000.00	
20b. Customers' accounts discounted or assigned (contra)	0,000.00	
20c. Obligations secured by liens on inventories.	0,000.00	
20d. Obligations secured by securities deposited as collateral	0,000.00	0,000.00
22. Accrued liabilities (interest, taxes, wages, etc.)		0,000.00
Other current liabilities (describe fully):		
.....	$0,000.00	
.....	0,000.00	
.....	0,000.00	0,000.00
Total current liabilities		$0,000.00
Fixed liabilities:		
24. Mortgage on plant (due date.....)	$0,000.00	
26. Mortgage on other real estate (due date....)	0,000.00	
28. Chattel mortgage on machinery or equipment (due date.....)	0,000.00	
30. Bonded debt (due date.....)	0,000.00	0,000.00
32. Other fixed liabilities (described fully):		
.....	0,000.00	
.....	0,000.00	
.....	0,000.00	0,000.00
Total liabilities		$0,000.00

Net Worth:			
34. If a corporation—			
(a) Preferred stock (less stock in treasury)		$0,000.00	
(b) Common stock (less stock in treasury)		0,000.00	
(c) Surplus and undivided profits		0,000.00	
		$0,000.00	
Less—(d) Book value of goodwill	$0,000.00		
Less—(e) Deficit	0,000.00	0,000.00	0,000.00
36. If an individual or partnership—			
(a) Capital		$0,000.00	
(b) Undistributed profits or deficit		0,000.00	0,000.00
Total			$0,000.00

Form 317

Form of Statement of Profit and Loss Recommended by Federal Reserve Board

Comparative Statement of Profit and Loss for Three Years Ending ....., 19...

	Year ending.....		
	19..	19..	19..
Gross sales	$00,000.00	$00,000.00	$000,000.00
Less outward freight, allowances, and return	00,000.00	00,000.00	000,000.00
Net sales	$00,000.00	$00,000.00	$000,000.00
Inventory beginning of year	$00,000.00	$00,000.00	$000,000.00
Purchases, net	00,000.00	00,000.00	000,000.00
	$00,000.00	$00,000.00	$000,000.00
Less—inventory end of year	00,000.00	00,000.00	000,000.00
Cost of sales	$00,000.00	$00,000.00	$000,000.00
Gross profit on sales	$00,000.00	$00,000.00	$000,000.00
Selling expenses (itemized to correspond with ledger accounts kept)	$00,000.00	$00,000.00	$000,000.00
Total selling expense	$00,000.00	$00,000.00	$000,000.00
General expenses (itemized to correspond with ledger accounts kept)	$00,000.00	$00,000.00	$000,000.00
Total general expense	$00,000.00	$00,000.00	$000,000.00

Administrative expenses (itemized to correspond with ledger accounts kept)	$00,000.00	$00,000.00	$000,000.00
Total administrative expense	$00,000.00	$00,000.00	$000,000.00
Total expenses	$00,000.00	$00,000.00	$000,000.00
Net profit on sales	$00,000.00	$00,000.00	$000,000.00
Other Income:			
Income from investments	$00,000.00	$00,000.00	$000,000.00
Interest on notes receivable, etc.	00,000.00	00,000.00	000,000.00
Gross income	$00,000.00	$00,000.00	$000,000.00
Deductions from income:			
Interest on bonded debt	$00,000.00	$00,000.00	$000,000.00
Interest on notes payable	00,000.00	00,000.00	000,000.00
Total deductions	$00,000.00	$00,000.00	$000,000.00
Net income—profit and loss	$00,000.00	$00,000.00	$000,000.00
Add special credits to profits and loss.	00,000.00	00,000.00	000,000.00
Deduct special charges to profit and loss	00,000.00	00,000.00	000,000.00
Profit and loss for period	$00,000.00	$00,000.00	$000,000.00
Surplus beginning of period	00,000.00	00,000.00	000,000.00
	$00,000.00	$00,000.00	$000,000.00
Dividends paid	$00,000.00	$00,000.00	$000,000.00
	$00,000.00	$00,000.00	$000,000.00
Surplus ending of period	$00,000.00	$00,000.00	$000,000.00
	$00,000.00	$00,000.00	$000,000.00

5. Analysis of Single Balance Sheet

The tests applied in analyzing a single balance sheet are:

1. *Working Capital ratio,* being the percentage of ratio of current assets to current liabiilities. Bankers sometimes require as a rule-of-thumb, that current assets of borrowing concerns be kept at not less than twice current liabilities. A close connection exists between (*a*) working capital position and (*b*) expenditure of money on plant and equipment, since such expenditures usually diminish working capital. In making extensive additions to capital assets care must be taken to avoid impairing working capital; such impairment renders difficult the liquidating of current debts.
2. *Percentage of important asset groups to total assets,* to

ascertain whether normal relationships exist. In some businesses the percentage of investment in capital assets to total investment is high — as much as 66% in copper mining and manufacturing industries, 72% in iron and steel manufacturing industries, and 78% in the bituminous coal mining industry. In merchandising establishments, on the other hand, the investment in capital assets is frequently as low as 13% or 14% of the total investment.

3. *Percentage of stockholders' investment to (a) total assets, and (b) total outside liabilities,* to ascertain whether stockholders have supplied enough of the total investment. For this purpose the stockholders' equity should be analyzed, to show what percentage has been paid in and what percentage accumulated through profits retained in the business.

6. Analysis of Two Balance Sheets

The following tests are employed to analyze two balance sheets:

1. *The comparative balance sheet,* in which the assets and liabilities for a given year are placed in one perpendicular column, and those for the next year in another parallel column. The increases and decreases are extended into a third column, as in Form 318.

2. *The statement of application of funds,* derived from information contained in two successive balance sheets, sets forth significant changes in the status of assets and liabilities. Using the data in Form 318, the work sheet to show provision and application of funds is given in Form 319.

Form 320 shows the statement of application of funds for the year ended December 31, 1924. Net profit is adjusted for amounts deducted as expenses but which do not require any disbursement of cash. Also, the full amount of the provision for both depreciation and contingencies is added back, although in the work sheet, Form 319, only net increases are shown extended into the "Provided" column.

FORM 318

THE B. C. COMPANY
COMPARATIVE BALANCE SHEET

ASSETS	Dec. 31, 1923	Dec. 31, 1924	Increase or Decrease*
Land	$10,000.00	$10,000.00	$ ——
Buildings	10,000.00	11,000.00	1,000.00
Machinery and Equipment	7,600.00	6,600.00	1,000.00*
Merchandise	15,000.00	16,000.00	1,000.00
Cash	100.00	200.00	100.00
Accounts Receivable	6,100.00	5,000.00	1,100.00*
Stocks Purchased	——	5,000.00	5,000.00
Bond Discount	1,200.00	1,100.00	100.00
Bonds	6,000.00	5,800.00	200.00
	$56,000.00	$60,700.00	$4,700.00
LIABILITIES			
Bonds	$10,000.00	$10,000.00	$ ——
Reserve for Depreciation	3,000.00	5,000.00	2,000.00
Reserve for Fire Losses	4,000.00	4,000.00	——
Reserve for Contingencies	6,000.00	7,000.00	1,000.00
Capital Stock	25,000.00	25,000.00	——
Surplus	8,000.00	9,700.00	1,700.00
	$56,000.00	$60,700.00	$4,700.00

7. Analysis of Balance Sheet in Conjunction With Income Statement of Preceding Period

The following tests are applied in making this analysis:

1. *Turnover on plant investment,* being the number of times net plant investment is contained in sales.
2. *Turnover on total investment,* being the number of times the total investment is contained in sales.

8. Comments on Balance Sheet Analysis

(1) During periods of business expansion prices rise, sales increase, and the relative amount of capital tied up in inventories and accounts receivable increases. When deflation sets in the capital tied up in these assets should decrease, so that the relationship of capital thus invested to sales may remain more or less constant.

Form 319

The B. C. Company
Work Sheet Showing Application of Funds

	Dec. 31, 1923	Dec. 31, 1924	Changes Debits	Changes Credits	Working Capital Increase	Working Capital Decrease	Funds Applied	Funds Provided
Assets								
Land	$10,000.00	$10,000.00	$ ——	$ ——	$ ——	$ ——	$ ——	$ ——
Buildings	10,000.00	11,000.00	1,000.00	——	——	——	1,000.00	——
Machinery and Equipment	7,600.00	6,600,00	——	1,000.00	——	——	——	1,000.00
Merchandise	15,000.00	16,000.00	1,000.00	——	1,000.00	——	——	——
Cash	100.00	200.00	100.00	——	100.00	——	——	——
Accounts Receivable	6,100.00	5,000.00	——	1,100.00	——	1,100.00	——	——
Stocks Purchased	——	5,000.00	5,000.00	——	——	——	5,000.00	——
Bond Discount	1,200.00	1,100.00	——	100.00	——	——	——	100.00
Bonds	6,000.00	5,800.00	——	200.00	——	——	——	200.00
	$56,000.00	$60,700.00						
Liabilities								
Bonds	$10,000.00	$10,000.00	$ ——	$ ——	$ ——	$ ——	$ ——	$ ——
Reserve for Depreciation	3,000.00	5,000.00	——	2,000.00	——	——	——	2,000.00
Reserve for Fire Losses	4,000.00	4,000.00	——	——	——	——	——	——
Reserve for Contingencies	6,000.00	7,000.00	——	1,000.00	——	——	——	1,000.00
Capital Stock	25,000.00	25,000.00	——	——	——	——	——	——
Surplus	8,000.00	9,700.00	——	1,700.00	——	——	——	1,700.00
	$56,000.00	$60,700.00	$6,100.00	$6,100.00	$1,100.00	$1,100.00	$5,000.00	$5,000.00

FORM 320

THE B. C. COMPANY
STATEMENT OF APPLICATION OF FUNDS FOR THE YEAR ENDING DECEMBER 31, 1924

Funds Provided:	
Profit from operations	$ 1,700.00
Sale of Machinery and Equipment	1,000.00
Add Back—	
Bond discount amortized	100.00
Bonds written down to market	200.00
Depreciation provided	5,000.00
Allowances for contingencies	3,000.00
	$11,000.00
Funds Applied:	
Stock purchased	$ 5,000.00
Purchase of building	1,000.00
Purchase of replacement machinery	3,000.00
Judgment paid	2,000.00
	$11,000.00

(2) In case of investment in plant and equipment, expansion is a more serious matter. In periods of expansion, when additional space is required for increased activities, it is not usually difficult to secure funds with which to construct extensions to plant and purchase additional equipment; but when capital has thus been invested it is extremely difficult to reduce its amount when deflation occurs. Thus the increased expense burden inherent in increased investments in capital assets is permanent. When the ratio of investment in capital assets to volume of business done becomes less favorable, it is expressed technically as resulting in a decreased turnover on capital assets.

(3) The importance of maintaining normal relationships among fundamental divisions of invested capital is obvious. When these relationships become abnormal because of bad judgment exercised in making the investments or because of changed business conditions, loss results.

(4) What constitutes normal relationships in a given business depends largely on the nature of the business. Not only should normal relationships be established under given

conditions, but studies should be made to see that with growth and changing conditions relationships are kept normal. Thus under altered conditions an increase in the percentage of total capital invested in capital assets may be normal and result in increased profits.

(5) The amount of current assets determines what part of capital can be secured through short-term loans.

(6) Funds secured through sale of stocks and bonds and retained earnings must provide (*a*) capital assets and (*b*) working capital. Unless sufficient funds are thus secured, working capital is impaired and the working capital ratio rendered unsatisfactory.

XXIV

VOTING TRUSTS

1. Purpose and Origin of Voting Trusts

Occasions frequently arise when a group of stockholders, because of inertia or otherwise, are unable to take any effective action in the direction of the enterprise in which they are interested. This is sometimes true in case of going concerns and it is especially true in case of concerns undergoing reorganization. Under such circumstances the voting trust agreement is a device which may be employed to centralize control in the hands of a few responsible men. The stockholder who surrenders his stock certificate for a voting trust certificate surrenders his right to vote but retains his other rights, such for example as his right to receive any dividends that may be declared on the stock. He also retains his right to dispose of his interest in the enterprise and voting trust certificates may be listed on the stock exchanges the same as is stock. An illustration is the case of the common and preferred certificates of deposit of the preferred and common stock of the Chicago, Milwaukee and St. Paul Railway Company, issued respectively by the New York Trust Company and the Central Union Trust Company of New York to holders of preferred and common stock. These were issued under a plan and agreement dated June 1, 1925. The final step in the reorganization of this road was taken February 27, 1928, when holders of such certificates of deposit were notified that voting trust certificates for the new preferred and common stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, newly organized under the laws of Wisconsin, and which acquired the property of the former Chicago, Milwaukee and St. Paul Railway Com-

pany, would be issued in the names borne by the certificates of deposit surrendered. Thus the control of the reorganized road was retained by the voting trustees.

The voting trust is of relatively recent origin. Dewing, in *Financial Policy of Corporation,* page 617, suggests that it was first employed in 1864 in case of the Pacific Mail Company, and that the earliest railroad voting trust bearing any analogy to the modern form was that of the Atlantic and Great Western in 1868. Much material on the subject may be found in Cushing, H. A., *Voting Trusts, A Chapter in Recent Corporate History* (1915). It contains original documents and a detailed discussion of the subject. Other references are given in 13 *Yale Law Journal.* A discussion of the voting trust as applied to banks is found in *Illinois Law Review,* February, 1928, page 608. See also Wormser, "Corporation Voting Trusts," in *Columbia Law Review,* Vol. 18 (1918), page 135; Dewing, *Financial Policy of Corporations,* chapter 9; Conyngton, *Corporation Procedure,* chapter 77; Fraser, *Problems in Finance,* pages 671-673. Considerable documentary material is fund in Gerstenberg, *Materials of Corporation Finance.*

The voting trust is used in nearly all organizations of railroads and public utilities and in many industrial reorganizations.

A voting trust, to be effective, must usually control a majority of the voting stock, but minority interest voting trusts are not unusual since they are a means of effectually expressing the wishes of interested parties.

2. Legality of Voting Trusts

Several states have legalized voting trusts by statutory enactment. In New York the duration of voting trusts is limited to ten years; in Maryland and Nevada to five years.

The laws of 1925, ch. 120, amended Sec. 50 of the Stock Corporation Law of New York to read as follows:

Sec. 50, Voting Trust Agreements.—A stockholder by agreement in writing, may transfer his stock to a voting trustee or trustees

for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions therein stated. Every other stockholder may transfer his stock to the same trustee or trustees, and thereupon shall be a party to such agreement. The certificates of stock so transferred shall be surrendered and canceled and new certificates therefor issued to such trustee or trustees in which it shall appear that they are issued pursuant to such agreement, and in the entry of such ownership in the proper books of such corporation that fact shall also be noted, and thereupon such trustee or trustees may vote upon the stock so transferred during the term of such agreement. A duplicate of every agreement shall be filed in the office of the corporation and at all times during business hours be open to inspection of any stockholder or his attorney. This section shall not apply to a banking corporation.

The amendment made in 1925 consisted in adding the last sentence, making the law inapplicable to banks.

In states which have not thus expressly authorized voting trust agreements there exists a wide variation in court decisions. In North Carolina, Illinois and Connecticut the decisions have been adverse to voting trust agreements, while in Massachusetts and other states they have been upheld.

In *Brighton* v. *Bates,* 175 Mass. 105, the Supreme Court of Massachusetts said:

> . . . we know nothing in the policy of our law to prevent a majority of stockholders from transferring their stock to a trustee with unrestricted power to vote upon it. . . .
>
> A stockholder has a right to put his shares in trust, whatever his motive. . . . As to the arrangement for trustees uniting to elect their candidates, the decisions of other states show that such arrangements have been upheld, and we do not think that it needs argument to prove that they are lawful. If stockholders want to make their power felt they must unite. There is no reason why a majority should not agree to keep together.

The federal courts are not inclined to frown on voting trusts. In 1867, in *Brown* v. *Pacific Mail S. S. Co.,* 5 Blatchf. 525, an agreement among ten persons who bought 10,000 shares of stock of a corporation upon the condition that no party should sell his stock without first offering it to his associates, that an irrevocable power of attorney should be given to Brown Brothers & Co. to vote the stock, and that any increases in the stock through stock

dividends should come under the agreement was upheld. A voting trust was upheld in *Toledo Traction, Lt. & Pr. Co.* v. *Smith,* 205 Fed. 643. Cook, *Corp.,* 8th ed., vol. 3, sec. 622 f, p. 2235, after an extended consideration of federal and state cases, concludes that "such a pooling of stock is not illegal in itself, but, like all contracts, may be illegal if actual fraud is involved."

Wormser, in *Columbia Law Review,* Vol. 18 (1918), page 135, regarding the legality of voting trusts, says:

It is submitted that, on sound principle, voting trusts and pooling agreements should be upheld as valid and legal, provided that the propriety of their object and the good purpose of their creation affirmatively appear. In other words, the voting trust should not be condemned per se. The validity of the trust should be made dependent upon the purposes for which the trust is created, the powers that are conferred, and the propriety of the objects in view. If the pooling, or combining, or trust is designed to carry out a particular corporate policy with a view to promote the best interests of the corporate body of stockholders, the agreement should be upheld as valid. On the other hand, where the voting trust or pooling agreement is created to consummate an unfair or monopolistic purpose, it should be condemned.

To summarize. It is unsound to hold that "all agreements and devices by which stockholders surrender their voting powers are invalid." It is unsound to hold that voting trusts are void per se, as opposed to good public policy. Such a point of view is surely unprogressive. It ignores business necessities. It disregards economic considerations. It shuts its eyes to business actualities. . . .

The correct rule to adopt is to uphold the legality of the voting trust or pooling agreement, provided the propriety and reasonableness of its object affirmatively appear, and provided that the arrangement itself is honest and equitable. The voting trust, in other words, should not be condemned as void per se, but should only be condemned in those instances where the trust or pooling agreement is created and carried out in order to effectuate an improper, unjust, and monopolistic object.

3. Voting Trusts Distinguished from Proxies

Concerning the difference between voting trusts and proxies Cushing, *Voting Trusts,* page 603, says:

. . . Those who suggest an analogy between a proxy and a voting trust agreement ignore certain fundamental differences

between them. The usual proxy merely establishes a relation of principal and agent terminable by the principal at will either through revocation or through sale of his stock. The voting trust agreement vests in the trustees an interest in the stock which the original owner obviously is unable to nullify by any sale of stock and which he cannot otherwise cancel except through an attempted breach of contract. The holder of a proxy has no control over the stock itself, while the voting trustees have the possession of the stock as well as the legal title to it. The proxy creates a relation of a temporary character under a restrictive statutory authority; the voting trust is created without the need of statutory license and confers not a revocable authority upon an agent but a qualified title upon a transferee of property.

4. Banking Corporations

It is probable that Sec. 50 of the New York Stock Corporation Law does not apply to national banks. See *Illinois Law Review,* February, 1928, pages 587-612. Extensive research has disclosed but one instance where the validity of a voting trust of national bank stock was squarely passed upon, viz., *Bridgers* v. *First Natl. Bk. of Tarboro,* 152 N. C. 293. The conclusion of the majority of the court was that stockholders of national banks in North Carolina could not part with their individual right of voting their stock except upon the terms prescribed in the North Carolina Revisal, sec. 1,184, which limited such alienation of voting power to the giving of a proxy, revocable at will and not to run in any case for more than three years. It is not clear in this case, however, whether the agreement was a voting trust or an attempt to create an irrevocable proxy.

The attitude of the federal courts seems to be favorable towards voting trusts of national banks (*Illinois Law Review,* February, 1918, page 606).

Mr. Murray C. Bernays, writing in *Illinois Law Review,* February, 1928, page 608, says:

> There is, as the writer pointed out, no direct federal statutory prohibition against voting trusts of the stock of national banks. The problem remains to be considered, however, whether there is anything in the National Banks Act which may be said by impli-

cation to impose such a prohibition. In the judgment of the writer, the said statute contains no such implied prohibition. . . .

5. Terms of Voting Trust Agreements

The terms of the voting trust agreement will naturally vary in accordance with the desires of the stockholders or of those who act for them. Since extensive powers are usually vested in the trustees, it is important that these powers be clearly defined in the agreement which constitutes them trustees. The earlier trusts usually left the powers of the trustees unrestricted, as was the case in the voting trust of the St. Louis, Iron Mountain and Southern Railways, in 1875, which vested in Baring Brothers absolute but temporary control of the road. In more recent voting trusts the powers of the trustees have been limited in various ways.

A common form of restriction is that which limits in some ways subsequent security issues. An illustration of such a limitation is found in the voting trust agreement of the Chicago Great Western Railway (1915), which provided as follows relative to security issues:

> The voting trustees, however, during the continuance of this agreement, shall not vote said stock to authorize or consent to any mortgage upon the property of the Company acquired under the aforesaid plan of reorganization of the Chicago Great Western Railway Company, to secure any bonds or indebtedness other than the First Mortgage Fifty-year Four Per Cent Gold Bonds of the Company described in the preamble to this agreement, and shall not vote to authorize any increase in the amount of the authorized preferred capital stock of the Company, except in each instance with the consent in writing of the registered holders of stock trust certificates calling for a majority in amount of the preferred stock of the Company at the time outstanding.

Similar restrictions are found in many of the more recent voting trust agreements. The purpose of such restrictions is to protect the holders of securities from excessive loss through overextension of credit or sale of excessive amounts of stock.

Other restricting provisions of the agreement are some-

times found which place limitations on the sale of securities or upon the manner in which consolidation may be effected with other concerns. Illustrative of such restrictions is the following extract from the voting trust agreement of the South Carolina Western Railroad, terms of which appeared on the stock trust certificates:

> . . . No voting trust right passes by or under this certificate or by or under any agreement, express or implied, it being expressly stipulated that until the actual transfer of such stock certificates to the registered holder hereof the Voting Trustees shall possess and shall be entitled in their discretion to exercise in respect of any and all of such stock the right to vote thereon for every purpose, and to consent to any corporate act of said railway as provided in said agreement, but the Voting Trustees will not vote said stock to authorize the creation of any mortgage additional to the First Mortgage dated August 1, 1910, upon the property of the Railway, or to authorize any merger or consolidation of the Company with any other company, or to authorize any increase of its capital stock, except in each instance with the consent of the registered holder of stock trust certificates calling for a majority in amount of the stock of the railway at the time outstanding.

The voting trust agreement is ordinarily lodged with a trust company as depository which acts as agent for the trustees. The stock trust certificate, which is issued in exchange for the voting stock, usually contains certain information found in the agreement, and in particular specifies the conditions under which it is issued, restrictions on the voting power, etc. The stock trust certificate makes reference to the voting trustee, where it is lodged, and possibly to certain provisions of the agreement which are of direct interest to certificate holders.

The duration of voting trusts is sometimes fixed by law, as in New York. Sometimes the agreement is terminated as the result of some event, such as the declaration of one or more dividends. In Cushing, *Voting Trusts,* is found an extensive discussion of conditions of termination of voting trusts, as well as many of the documents used in connection with such termination.

The following is a voting trust agreement between the stockholders of Richmond Waterfront Realty Corporation and trustees. In New York the law limits the duration of voting trusts to ten years, which is the duration of this one.

FORM 321

VOTING TRUST AGREEMENT

AGREEMENT dated October 14, 1925, between such of the owners and holders (hereinafter called Stockholders) of shares of the capital stock of RICHMOND WATERFRONT REALTY CORPORATION, a corporation of the State of New York (hereinafter called the Corporation), as shall become parties hereto in the manner hereinafter provided, parties of the first part, and B. F. POPE, F. R. FENTON, HERBERT NASH, JR., B. F. TAYLOR and W. W. WATSON, JR., and the survivors and successors of them jointly as Voting Trustees (hereinafter called the Trustees), parties of the second part;

WHEREAS the Stockholders deem it for the best interests of themselves and of the Corporation to act together concerning the management of the Corporation and to that end to unite for a definite period of time certain voting and other powers and rights held by them as stockholders of the Corporation, and to place such rights and powers in the hands of the Trustees as hereinafter provided;

NOW, THEREFORE, in consideration of the premises, of the mutual covenants herein contained, and of the sum of One Dollar by each of the parties to the others in hand paid, the receipt whereof is hereby acknowledged, THIS AGREEMENT WITNESSETH:

FIRST: The Stockholders hereby severally agree to assign, transfer and deliver to the Trustees such shares of the capital stock of the Corporation and the certificates therefor as may from time to time during the term of this agreement stand registered on the books of the Corporation in the names of such Stockholders, such shares to be held by the Trustees together with such other shares as may hereafter from time to time be delivered hereunder by any such Stockholder of the Corporation, and to be disposed of by the Trustees under and pursuant to the terms and conditions of this agreement.

SECOND: The Trustees hereby promise and agree with the Stockholders individually that the Trustees will issue or cause to be issued to or upon the order of each Stockholder in exchange for the certificates for shares of the capital stock of the Corporation assigned, transferred and delivered by him to the Trustees, a

voting trust certificate or certificates calling for shares to the amount so delivered in substantially the form following [Form 322]:

FORM 322
VOTING TRUST CERTIFICATE

RICHMOND WATERFRONT REALTY CORPORATION.

VOTING TRUST CERTIFICATE FOR ..... SHARES.....

No. .....

THIS IS TO CERTIFY, that on October 14, 1935, or at the earlier termination of the agreement hereinafter referred to,
or registered assigns, will be entitled to receive, as hereinafter provided, a certificate or certificates for
shares, expressed to be fully paid of the capital stock of RICHMOND WATERFRONT REALTY CORPORATION, a corporation of the State of New York, and in the meantime to receive payments equal to the amount of dividends, if any, collected by the undersigned Voting Trustees, or their successors, upon a like number of such shares of such capital stock of said Corporation transferred to said Voting Trustees under and pursuant to the terms and conditions of a certain agreement dated October 14, 1925, by and between the Stockholders of said Corporation and said Voting Trustees, and until October 14, 1935, or until the prior termination of said agreement, said Voting Trustees or their successors shall possess and be entitled to exercise all rights of stockholders of every name and nature, including the right to vote in respect of any and all such stock, it being expressly stipulated that no voting right passes to the holder hereof or his assigns by or under this certificate or by or under any agreement, express or implied.

This certificate is issued under and pursuant to, and the rights of the registered holders hereof are subject to, and limited by, the terms and conditions of the aforesaid agreement which is on file with the Voting Trustees, and a duplicate of which agreement is on file in the principal office of the Corporation.

This certificate and the right, title and interest in and to the shares in respect of which this certificate is issued are transferable only on the books of the Voting Trustees by the registered holder hereof, in person or by attorney duly authorized, according to the rules established for the purpose by said Voting Trustees, upon surrender hereof properly assigned, and until so transferred said Voting Trustees may treat the registered holder as owner hereof

for all purposes whatsoever, except that no delivery of certificates of stock hereunder shall be made without the surrender hereof.

IN WITNESS WHEREOF said Voting Trustees, by one of their number or by their agent, have executed this certificate this day of .

B. F. POPE,
F. R. FENTON,
HERBERT NASH, JR.,
B. F. TAYLOR,
W. W. WATSON, JR.
By BANKERS TRUST COMPANY,
Agent.
By .....
Assistant Secretary.

[FORM OF ASSESSMENT]

FOR VALUE RECEIVED, hereby sell, assign and transfer unto the interest in the shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint attorney to transfer such interest in said certificate on the books of the within named Voting Trustees, or their successors, with full power of substitution in the premises.

Dated, , 19 .

.....

In the presence of

.....

THIRD: The Trustees may execute any or all of the said voting trust certificates by the signature of one of their number, or by an agent appointed by the Trustees for such purpose. The Trustees hereby appoint the Bankers Trust Company, of New York City, N. Y., as their agent to sign voting trust certificates. The Trustees or their successors shall have full power from time to time to appoint other and additional agents in the event of the resignation, refusal or inability to act of said Bankers Trust Company, or for any other reason in their discretion.

FOURTH: The right, title and interest in and to the shares represented by any voting trust certificate issued hereunder may be transferred on the books of the Trustees upon surrender of such certificate properly assigned by the registered holder thereof in person or by attorney duly authorized, according to the rules established for that purpose by the Trustees. The Trustees shall not be obliged to recognize nor shall they be liable for not recog-

nizing any person as the owner of any voting trust certificate issued hereunder other than the person in whose name the same shall be registered on their books.

FIFTH: The Trustees shall cause all shares of the capital stock of the Corporation deposited with them hereunder to be transferred on the books of the Corporation, either into their individual names as Voting Trustees under this agreement, or, in their discretion, into the name of "Voting Trustees under Agreement dated October 14, 1925". The Trustees are authorized and empowered to cause any further transfers of said shares to be made which may become necessary through the occurrence of any change of persons holding the office of Voting Trustees, as hereinafter provided.

SIXTH: From time to time hereafter during the term of this agreement the Trustees will receive such additional certificates for fully paid shares of the capital stock of the Corporation as any or all stockholders of the Corporation may tender and deliver to them, subject to the terms and conditions hereof, and in exchange for such certificates will issue and deliver voting trust certificates, as hereinbefore provided.

SEVENTH: During the term of this agreement the Trustees shall possess and be entitled to exercise all rights of stockholders of every name and nature, including the right to vote in respect of any and all such shares of the capital stock of the Corporation as may be deposited with them hereunder, including particularly the right to vote the said stock in favor of (1) the sale of part or of the entire assets of the Corporation for such consideration and payable in cash, securities or property as they in their discretion may determine; (2) the creation of bonded or other indebtedness secured by a mortgage or other lien on all or any part of the property or assets of the Corporation; (3) the liquidation of the business in whole or in part, from time to time or whenever in the opinion of the Voting Trustees conditions are such as to make it unwise to continue the same; (4) the dissolution of the Corporation, the winding up of its affairs and the distribution of its assets. The Trustees, for themselves and their successors in the trust, covenant and agree that they will pay or cause to be paid to or upon the written order of the registered holders from time to time of voting trust certificates issued hereunder, their proportionate amounts of any dividends collected by the trustees or their successors upon the shares of such capital stock deposited hereunder, and for the purpose of making any such payments or for any other purpose the Trustees may in their discretion order

their transfer books closed for such period or periods of time as to them shall seem proper.

EIGHTH: The Trustees are specifically authorized in the exercise of their unrestricted discretion in respect of any and all stock of the Corporation subject to this agreement, to vote for or to consent to any increase or decrease of the capital stock of the Corporation that lawfully may be submitted for action by the Stockholders. In case any increased capital stock of the Corporation shall be offered to the Stockholders for subscription, then, and in such case, upon receiving from the holder of any voting trust certificate prior to the time limited by the Corporation for subscription and payment, a written request to subscribe in his behalf and the money required to pay for a stated amount of said increased stock (not in excess of the ratable amount subscribable in respect of the stock represented by such voting trust certificate), the Trustees will make subscription and payment, and upon receiving from the Corporation certificates for the stock so subscribed for will issue voting trust certificates in respect thereof to the voting trust certificate holder who shall have made such request and payment.

NINTH: In case the Trustees shall receive any capital stock of the company issued by way of dividends upon stock held by them hereunder, the Trustees shall hold such stock and the certificates representing the same likewise subject to the terms hereof and shall issue voting trust certificates representing such stock dividend to the respective registered holders of the then outstanding voting trust certificates entitled to such dividend.

TENTH: In voting upon the shares of the capital stock of the Corporation held by them, the Trustees will exercise their best judgment from time to time, but it is expressly understood and agreed that no Trustee incurs any personal liability or responsibility by reason of any error of judgment or of law or of any matter or thing done or omitted to be done under this agreement or in the management of the affairs of the Corporation or otherwise except for his own wilful misconduct. Neither the agent hereinbefore appointed, nor any successor nor any other agent of the Trustees, shall incur any personal liability or responsibility whatever except for its or his own individual wilful misconduct.

ELEVENTH: This agreement will continue in force until October 14, 1935, or until the prior termination hereof. The Trustees at any time prior to October 14, 1935, may in their discretion terminate this agreement upon five days' notice in writing to the registered holders of the voting trust certificates. Upon the

termination of this agreement the Trustees, in exchange for and upon surrender of the voting trust certificates then outstanding and issued hereunder, will, in accordance with the terms hereof, deliver or cause to be delivered to the registered holders of such voting trust certificates, certificates representing shares of the capital stock of the Corporation to an amount equal to the number of such shares of the capital stock of the Corporation deposited hereunder and represented by such voting trust certificates. In case upon or after the termination of this agreement the Trustees shall deposit with the Corporation stock certificates held by them properly assigned in blank for transfer representing the number of shares of stock of the Corporation called for by the voting trust certificates then outstanding with written authority to the Corporation to deliver said stock certificates or new certificates in lieu thereof when and as said voting trust certificates shall be surrendered for exchange as herein provided, then all further liability of the Trustees, or any of them, for the delivery of stock certificates in exchange for voting trust certificates shall cease and determine.

TWELFTH: The Trustees must act for all purposes jointly and no action shall be taken or caused to be taken by the Trustees hereunder except by or with the vote of a majority of those at the time acting as Trustees, but the Trustees may act without a meeting upon the written assent of all of the Trustees.

The Trustees shall keep a record of all their proceedings and may adopt their own rules of procedure. They may delegate to a proxy or proxies, whether or not Trustees hereunder, the right to vote and act for them at any and all meetings of the stockholders of the Corporation with or without power of substitution as they may in their own absolute discretion determine. The Trustees may serve as officers or Directors of the Corporation and receive compensation therefor, and may vote or cause votes to be cast in favor of their own election as such Directors and officers. They may appoint and employ such agents and attorneys as in their discretion may be convenient and advisable in the administration of any of their powers and duties hereunder, and may remove them at pleasure. Any voting trustee and/or any firm of which he may be a member, and/or any corporation of which he may be a stockholder, director and/or officer, may, to the extent permitted by law, contract with the Corporation, or any controlled or subsidiary company, or be or become pecuniarily interested in any matter or transaction to which the Corporation and/or any controlled or subsidiary company may in any way be concerned.

THIRTEENTH: The Trustees at any time in office may adopt, use and issue voting trust certificates prepared by any of their predecessors and bearing the names of such predecessors, provided that each voting trust certificate so issued shall be signed by one of such Trustees or, if signed by any predecessor Trustee, provided that the Trustees shall have adopted such certificates and have determined to use and issue the same. All voting trust certificates so issued shall be deemed issued by the Trustees then in office.

FOURTEENTH: Any Trustee may at any time resign by delivering his resignation in writing to the other trustees, to take effect ten days thereafter, or on its earlier acceptance by the other trustees. Any vacancy so caused or caused by the death or inability to act of any voting trustee, shall be filled by appointment by the remaining trustees to be made by instrument in writing filed with the Corporation and with the agent of the trustees. In the event that the remaining trustees shall fail to so fill such vacancy within thirty (30) days, or in the event that there shall be no remaining trustees, any such vacancies shall be filled by a majority vote of the holders of voting trust certificates at a meeting duly called and held in accordance with the provisions of the by-laws of the Corporation for a special meeting of stockholders of the Corporation. In the event of any vacancy and the appointment of a successor to any Trustee, as herein provided, all the right, powers and duties of such Trustees shall at once pass to and devolve upon his successor.

FIFTEENTH: The Trustees hereunder and their successors may be parties to this agreement as Stockholders, and to the extent of the stock which may be deposited by them, they shall in all respects be entitled to the same rights and benefits hereunder as other Stockholders who may become parties hereto, and they may, as individuals, be and continue to be stockholders of the Corporation, or otherwise interested in the purchase or sale of its shares or the property owned by it.

SIXTEENTH: Any stockholder of the Corporation may adopt this agreement and become a party hereto and acquire all of the rights and benefits of a depositor of stock hereunder by depositing his certificates for shares of capital stock of the Corporation with the Trustees to be held for the purpose and subject to the terms hereof. The acceptance by any stockholder who shall so deposit any certificates for shares of the capital stock of the Corporation, of voting trust certificates issued hereunder, shall, without further act on his part, bind such stockholder, his representatives and assigns, as a party hereto, but, nevertheless, upon the request of

the Trustees, any such stockholder shall sign this agreement in duplicate.

SEVENTEENTH: The Trustees hereby accept and agree to perform the duties and trusts herein imposed, subject to all the terms, conditions and reservations herein contained, and agree that they will exercise the powers and perform the duties of trustees as herein set forth, provided, however, that nothing in this paragraph contained shall be construed to prevent any of the Trustees from resigning and discharging themselves at any time from the trusts aforesaid.

EIGHTEENTH: An original of this agreement shall be kept on file with the Trustees and a duplicate hereof shall be filed with the Corporation at its principal place of business in the State of New York, and such duplicate shall be open to the inspection of any stockholder of the Corporation daily during business hours, as provided by law. No holder of a voting trust certificate issued hereunder, or any other person, shall, however, have the right, except with the prior consent of the Trustees, to be given or withheld in their own absolute discretion, to examine the list of holders of such voting trust certificates, or the transfer books of the Trustees.

NINETEENTH: The term "Trustees" or "Voting Trustees" whenever used herein, refers, unless otherwise indicated to the contrary, to the Trustees at the time acting as such hereunder, and the expression "successors" or "successors in the trust", or any other equivalent term, shall be taken to include not only the successors of the Trustees named herein, but also any successor or successors of any such successor Trustees or Trustee.

TWENTIETH: This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties of the first part have deposited their stock hereunder or have subscribed their names hereto, and the parties of the second part or a majority of them have executed this agreement in duplicate as of the day and year first above written.

B. F. POPE,
F. R. FENTON,
HERBERT NASH, JR.,
B. F. TAYLOR,
W. W. WATSON, JR.,
Voting Trustees.

FORM 323

NOTICE OF MEETING OF HOLDERS OF VOTING TRUST CERTIFICATES

CHICAGO RAPID TRANSIT COMPANY

NOTICE OF MEETING

Chicago, Illinois, January 23, 1928

To the Holders of Voting Trust Certificates representing Common Stock of Chicago Rapid Transit Company, which certificates were issued under the Voting Trust Agreement dated May 2, 1924, constituting the undersigned as Voting Trustees:

Notice is hereby given that at 11 A. M. on February 14, 1928, at the principal office of Chicago Rapid Transit Company at 72 West Adams Street in Chicago, Illinois, in Room 1741, there will be held an Annual Meeting of the Holders of Voting Trust Certificates under the above mentioned Voting Trust Agreement and that the purpose of such meeting is to nominate three persons to be, by the Voting Trustees, voted for as Directors of Chicago Rapid Transit Company at the next Annual Meeting of that Company.

GEORGE M. REYNOLDS,
R. FLOYD CLINCH,
SAMUEL INSULL,
Voting Trustees
WILLIAM V. GRIFFIN, Secretary

XXV

THE INVESTMENT IN PLANT

1. Purpose of Expenditures

A company invests funds in its business with a view to securing a larger return per dollar of investment than would be possible by buying the securities of other companies. The effectiveness with which it accomplishes this result is measured in the end by the amount of surplus accumulated and the amount it pays its stockholders in dividends. Some corporations have been remarkably successful in this regard. An illustration of such success is found in General Motors Corporation which in 1927 distributed $134,836,081 in cash dividends on its common stock.

A corporation is interested in increasing its revenues if this can be done without too great an increase in its expenses. It is also interested in doing this without making too great an additional investment in capital assets. In other words, it desires always to employ its plant to as near 100 per cent capacity as possible. This means, too, that it is interested in stabilizing its revenues as far as the character of its business permits, because seasonal or cyclical fluctuations mean that plant cannot be employed continually at 100 per cent capacity unless the season of slack sales be employed in accumulating a stock of finished goods to be disposed of during the season of increased demand. This means that the coordination of production and consumption must be studied.

In order to discontinue or reform lines of business which are unprofitable the company must analyze its revenues as well as its expenses along departmental lines.

These various aspects of corporate expenditures and revenues will be considered under the following headings:

1. Turnover on capital assets
2. Analysis of plant expenses
3. Departmentization to promote analysis
4. Classification to promote analysis
5. Plant records to promote analysis
6. Control of expenditures on plant

Turnover on Capital Assets

2. Turnover Defined

The word turnover is commonly used to express the rapidity of disposal of merchandise or the rapidity of collection of accounts receivable. Thus, as applied to stock-in-trade, turnover is the number of times capital, in form of stock-in-trade, is reinvested during a given period, usually one year.

Since capital assets are not sold as is merchandise or liquidated as are accounts receivable, the measure of the effectiveness with which the investment therein is employed is somewhat different. Capital assets aid in the various activities necessary to promote sales; consequently, a test of the effectiveness of the investment in capital assets is its ratio to volume of sales made.

Volume of sales may be expressed either in dollars or in physical quantity. Which is more likely to serve as a fair basis of comparison must be determined.

Ordinarily, the investment in capital assets to be compared with volume of sales is original cost less depreciation.

3. Volume of Sales Expressed in Dollars

The chief objection to using volume of sales expressed in dollars for comparison with the investment in capital assets is the disturbing effect of changing price levels. The physical volume of sales may be declining, but increasing prices may keep sales in dollars up to or above former levels, in which event turnover on capital assets would show no unfavor-

able tendency in spite of the slowing down in activities.

Under such conditions it may be desirable to abandon dollar volume of sales, unless an adjustment can be made to eliminate the effect of such changes in price levels. One method of doing this is to construct a weighted index number of prices of commodities sold. This gives effect to the amount of each commodity as well as to price changes occurring therein.

If, owing to the variety of commodities sold, it is not practicable to construct such an index number it may be possible to use a published index number, such as Dun's or Bradstreet's, selecting that one which is constructed on the basis of the industry in question. These are based on a wide range of commodities and are the result of careful research. Before finally deciding on any procedure careful attention should be paid to all possible procedures.

After constructing or adopting an index number of prices, the manner in which the fluctuating price element is eliminated is illustrated as follows:

If 1913 is chosen as the base year and the weighted prices are reduced to percentages of the 1913 prices, the index number for the years 1913-1921, inclusive, is as shown in column (2) in Form 324. In column (3) are shown the amounts of annual sales. In column (4) is shown the quotient secured by dividing the annual sales figure by the index number for that year. The numbers in column (4) consequently are proportionate to physical volume of sales, and when reduced to percentages based on the 1913 figure, as shown in column (5), show the increase or decrease in physical volume of commodities sold from year to year. However, to find turnover on capital assets, expressed as the ratio of volume of sales to investment in capital assets, the amounts in column (4) should be divided by the amounts in column (6), representing the amount of capital invested in capital assets. The resulting quotients, shown in column (7), express the rate of turnover on capital assets for the various years.

FORM 324

(1) Year	(2) Index number	(3) Annual sales	(4) Annual sales divided by index No.	(5) Figures in column (4) reduced to percentages on 1913 basis	(6) Investment in capital assets	(7) Turnover on capital assets
1913	100	$300,000.00	$300,000.00	$ 100.00	$100,000.00	3.00
1914	103	320,000.00	310,662.13	103.55	100,000.00	3.10
1915	114	340,000.00	298,245.61	99.41	100,000.00	3.98
1916	130	370,000.00	284,615.38	94.87	100,000.00	2.84
1917	145	395,000.00	272,413.79	90.80	100,000.00	2.72
1918	140	420,000.00	300,000.00	100.00	150,000.00	2.00
1919	150	500,000.00	333,333.33	111.11	150,000.00	2.22
1920	160	510,000.00	318,750.00	106.25	150,000.00	2.13
1921	165	470,000.00	284,848.48	94.95	150,000.00	1.90

The results as regards the employment of funds invested in capital assets grow less favorable in spite of increased sales, because the increase in sales is not sufficient to compensate for the increased investment in capital assets. The increase in sales as adjusted to represent volume (Column 4), by dividing sales by the index numbers for the corresponding years, is not commensurate with the increase in sales measured in dollars (Column 3).

4. Volume of Sales Expressed in Physical Quantities

When, instead of using annual sales expressed in dollars and adjusted to eliminate price variations, it is preferable to calculate the ratio of investment to sales by comparing it with the physical volume, this physical volume should be expressed in an appropriate unit, as gallons, tons, pounds, and so on. When this method is pursued columns (2), (4), and (5) in the illustration above are eliminated, and the final turnover ratio is found by dividing physical volume, expressed in column (3) by investment, expressed in column (6), the result being expressed in column (7).

5. Sales and Investment Figures to be Used

Net sales should be taken as the figure to compare with investment in capital assets. This is found by deducting from gross sales all returns, allowances, freight, and so on.

Where physical volume of sales is used the figure should represent only net shipments; returns, replacements of defective goods, etc., for which payment is not received, being deducted.

The figure for investment in capital assets should include all investments in plant and equipment—usually referred to as the fixed assets—taken at depreciated book values. Depreciated book value is preferable to original cost because the amount written off to depreciation represents an amount that has been returned through revenue and has either been invested in additional plant (and is therefore already included once in the investment figure), or else has been returned to the stockholders as dividends and consequently represents an amortization of investment in plant.

6. Effect of Increased Turnover on Capital Assets Illustrated

When an enterprise increases its turnover on capital assets it places itself in a more favorable position from every point of view. On the other hand, if its turnover on capital assets is decreasing it is being placed in a less favorable situation, especially in relation to competitors. Such an unfavorable tendency leads to the elimination of the concern from business if permitted to go far enough. It may be remedied by (*a*) reducing the investment in capital assets, (*b*) increasing the volume of business done, or (*c*) doing both.

The difficulty in reducing the investment in capital assets is evident; hence the only alternative usually is to quicken the productive processes and increase the volume of sales. There are difficulties in the way of this program also, such as competition of concerns better situated, the work of building up a better sales organization, and so on.

To illustrate the advantages of a high rate of turnover on capital assets, assume that in case of a given enterprise the situation is as follows:

Investment in capital assets (depreciated)	$ 500,000
Annual amount of sales	1,500,000

Hence, the turnover on capital assets is	3
Fixed charges, averaging 12% on capital assets, are	60,000
Interest cost of funds invested in capital assets is 8%, or	40,000
Therefore, total annual cost of investment in capital assets is	100,000
Or, expressed as a percentage on sales	6 2/3%

Next, assume that, without increasing the investment in capital assets, volume of sales is increased to	$2,000,000
Now, the percentage of total annual cost of capital asset investment to sales is reduced to	5%
Or, an added margin of net profit on sales of	1 2/3%

Next, assume that, without decreasing the volume of sales the investment in capital assets can be reduced to	$ 300,000
Thus increasing the turnover on capital assets to	5
And reducing fixed charges, averaging 12% on capital assets, to	36,000
And interest cost of funds invested in capital assets (8%) to	24,000
Making total annual cost of investment in capital assets	60,000
Or, expressed as a percentage on sales	4%
Which amounts to an added margin of net profit on sales of	2 2/3%

Next, assume that volume of sales can be increased to	$2,000,000
And that investment in capital assets can be reduced to	300,000
Thus increasing the turnover on capital assets to	6 2/3%
Fixed charges, averaging 12% on capital assets, are	$ 36,000
And interest cost of funds invested in capital assets (8%) is	24,000
Making total annual cost of investment in capital assets	60,000
Or, expressed as a percentage on sales	3%
Which amounts to an added margin of net profit on sales of	3 2/3%

Such are the possibilities open to exploitation in an attempt to increase turnover on capital assets.

7. Standardization of Turnover Rates

In a given industry there is a tendency for the rate of turnover on capital assets to become somewhat fixed, varying from the normal more or less with varying conditions in the business cycle, changing conditions in competitive relationships, and so on.

Where expansion in investments in capital assets is most rapid there is a tendency for the rate of turnover to decrease, owing to inability of the production and sales department to increase their activities in proportion to plant growth. As a consequence, higher prices are charged consumers than otherwise would be the case, so that the margin between costs of raw materials and selling prices of the finished product is increased. This has been termed "wider spreads between the producer and the consumer." It is the increase in demand for the product in question which makes such wider spread possible, hence makes it profitable to increase the investment in capital assets, although rate of turnover thereon is decreased. The increased spread between producer and consumer results in wider margins of gross profit out of which increased costs of investment in capital assets may be met without reducing the rate of net profit on invested capital realized.

Nevertheless, industries tend to develop characteristic rates of turnover on capital assets. Where, as in some industries, a heavy investment in capital assets is necessary in proportion to volume of business handled, the turnover rate is low. In industries where contrary conditions exist, the turnover rate is high.

The lowest rates are found in the coal, iron and steel, lead, and petroleum oil businesses. The highest are found in the tobacco products, general merchandising, mail-order merchandising, slaughtering and meat-packing, and retail chain store businesses. In the coal business the capital invested

in capital assets is equal to two years' sales, whereas in the tobacco products business it is equal to about 28 days' sales.

Where variations exist in turnover rates among concerns engaged in the same industry, they reflect the relative effectiveness with which capital invested in capital assets is employed by the various concerns, hence the relative advantage or disadvantage of each concern from the competitive point of view. The differences may be accounted for in various ways, such as up-to-dateness of plant and equipment, managerial policies, and so on. A policy regarding investments in capital assets which has no material effect on the rate of turnover on capital assets over a period of two or three years may, over longer periods, materially affect it.

8. Making Weighted Index Numbers

Index numbers are employed to show trends in prices or in other movements which can be quantitatively expressed by means of statistical data.

Professor W. C. Mitchell enumerates the steps involved in the construction of index numbers as:

1. Defining the purpose for which the final results are to be used.
2. Deciding the numbers and kinds of commodities to be included.
3. Determining whether these commodities shall be treated alike or shall be weighted according to relative importance.
4. Collecting the actual prices of the commodities chosen, and, if a weighted series is to be made, collecting also data regarding their relative importance.
5. Deciding whether to measure the average variations of prices or the variations of a sum of actual prices.
6. If average variations are to be measured, choosing the base upon which relative prices shall be computed, and
7. Settling upon the form of average to be struck.

1. *Purpose*—Here the object is to secure an index number which measures the changes in prices of commodities sold by a given concern over a period of years.

2. *Number and Kinds of Commodities to be Included*—

Here this is determined by the number and kind of commodities sold by the enterprise in question.

3. *Treatment of Each Commodity*—Here it is desirable to weight each commodity in proportion to its importance. Perhaps the best way of determining its relative importance is to determine what part of total cost of goods sold applies to the commodity in question, or else what part of total sales applies to it.

4. *Collecting Price and Weight Data*—The prices to be weighted are the sales prices. These should be collected from the office records of the company in question. For each year the average price of each commodity should be secured by taking the prices as at the beginning of each month, provided there has been sufficient price variation to make averaging necessary. If the weighting is to be on the basis of percentage of sales of the commodity in question to total sales, this should be computed from an analysis of sales sheet. If on the basis of cost of goods sold, it should be computed from an analysis of cost of sales sheets.

5. *Average Varations of Prices vs. Variations of a Sum of Actual Prices*—Either method may be employed. Probably the simplest plan is to add together the weighted prices for each year, then reduce the various totals thus secured to percentages of the total for the first year taken as 100, or the base.

6. *Choosing the Base upon Which to Compute Relative Prices*—If the method suggested in 5 is followed this may be neglected.

7. *Form of Average to Be Struck*—If the method suggested in 5 is followed this may be neglected.

9. Use of Index Numbers Illustrated

In Form 325 is given the index number of wholesale prices constructed by the Bureau of Labor Statistics, for the years 1913-1922, inclusive, based on a large and representative number of commodities (*Monthly Labor Review,* May, 1924, page 65).

FORM 325

INDEX NUMBERS OF WHOLESALE PRICES, 1913 TO APRIL, 1922
(1913 = 100)

Month	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922
January:										
Old Series	100	100	99	110	151	185	203	248	177	148
New Series	100	98	98	113	153	184	199	233	170	138
February:										
Old Series	100	99	101	112	156	186	197	249	167	151
New Series	100	99	99	115	157	186	193	232	160	141
March:										
Old Series	99	99	99	114	161	187	201	253	162	152
New Series	100	98	99	119	162	187	196	234	155	142
April:										
Old Series	98	98	100	117	172	190	203	265	154	152
New Series	100	98	99	121	173	190	199	245	148	143
May:										
Old Series	98	98	101	118	182	190	207	272	151	---
New Series	99	97	100	122	183	190	202	247	145	---
June:										
Old Series	100	99	99	119	185	193	207	269	148	---
New Series	99	97	99	123	185	191	203	243	142	---
July:										
Old Series	100	100	101	119	186	198	218	262	148	---
New Series	100	97	100	123	188	196	212	241	141	---
August:										
Old Series	101	103	100	123	185	202	226	250	152	---
New Series	100	101	100	126	189	200	216	231	142	---
September:										
Old Series	102	104	99	128	183	207	220	242	152	---
New Series	102	102	100	130	187	204	210	226	141	---
October:										
Old Series	101	99	101	134	181	204	223	225	150	---
New Series	101	97	102	136	183	202	211	211	142	---
November:										
Old Series	101	98	103	144	183	206	230	207	149	---
New Series	100	97	104	146	183	204	217	196	141	---
December:										
Old Series	99	98	106	146	182	206	238	189	149	---
New Series	99	97	108	149	182	202	223	179	140	---
Year:										
Old Series	100	100	101	124	176	196	212	243	153	---
New Series	100	98	101	127	177	194	206	226	147	---

Note the index numbers for the year. These represent averages of the monthly index numbers. The *new series* differs from the *old series* because of certain regroupings of commodities used in its computation, the addition of new articles, and the use of 1919 census data for weighting purposes, instead of 1909 census data formerly employed. For present purposes the new year series, which is given last in the table, is probably best.

By inserting the index numbers for the years 1913-1921 in column (2) of the table given in Form 324, and recomputing, there is secured in column (7) the turnover on capital assets

based on an adjustment of annual sales to represent volume of sales, using the index figure of the Bureau of Labor Statistics. An index number made up from price data of the concern in question is preferable to a general purpose index number such as that of the Bureau of Labor Statistics. A general purpose index number should be employed only after investigating to find whether or not it is representative of the commodities sold by the concern in question.

Analysis of Plant Expenses

10. Nature of Plant Expenses

Incidental to every investment in capital assets there are certain expenses, such as depreciation from wear and tear, obsolescence, inadequacy, repairs and upkeep. Sometimes interest on the investment is regarded as an expense. Whether or not it is an operating expense, it is a factor to be considered in determining the relative efficiency with which the investment is made and the probability that a plant will be capable of meeting competition.

If capital assets did not depreciate and require repairs, the only costs involved in their use would be interest and certain expenses incident to operating, such as heat, light, power, etc. The latter are not capital asset expenses, however.

One concern engaged in meat packing computes the annual expense of maintaining capital assets at 20% of their cost, this 20% being divided into two parts—10% for interest and dividend requirements and 10% for depreciation, repairs, taxes and insurance. Hence over a period of five years the investment in capital assets must be returned through revenues if costs incident to such investment are adequately met.

11. Nature of Depreciation

Depreciation is usually regarded as resulting from (*a*) wear and tear, (*b*) obsolescence and (*c*) inadequacy. In

reality there are numerous specific causes of depreciation. One cause of depreciation is found in the tenure of leaseholds, it being necessary to amortize the investment in improvements made on leased land over the period of the lease. A similar effect is found where natural resources are being exhausted. The investment in plant and equipment is usually of little value after exhaustion occurs, hence should be written down in accordance with the expected remaining life of such resources. Climatic conditions are sometimes unfavorable to longevity of capital assets. From this influence alone depreciation expenses vary considerably in different localities. Patents, copyrights and leaseholds depreciate independently of physical conditions. An increase in taxes may cause depreciation, being equivalent to confiscation of part of the asset's value by the state.

12. Depreciation Defined

Most definitions of depreciation are made with reference to some special cause or aspect, hence are inadequate for all purposes. An examination of these, however, shows that:

1. They refer to cost as the base.
2. The lessening in value is an expense.
3. This lessening in value is referred to in terms of the accounting period.
4. Depreciation is not ordinarily a direct departmental expense but an important element of overhead.
5. In computing depreciation expense, allowance should be made for estimated salvage.

13. Depreciation Classified

Ordinarily depreciation is regarded as comprising all losses arising from physical or functional deterioration, but as excluding cost of repairs.

1. *As to assets affected,* depreciation is *unit* or *composite.* Unit depreciation progresses until it results in the abandonment of the unit. Composite depreciation refers to the status of the plant as a whole. It reduces the plant to a

condition of normal depreciation, beyond which further total depreciation is prevented by replacement of outworn or obsolete units.

Composite depreciation exists in old plant even though current maintenance is properly cared for, because the units comprising plant are at no time all new, but are in various stages of depreciation. It is impossible to keep new all parts of capital assets.

It does not follow, however, that when a plant arrives at the point where replacements offset further reduction in depreciated book value of capital assets, such depreciated book value must be 50% of cost new. This is because much of the investment is in assets which do not depreciate. Land is an illustration.

2. *As to cause,* depreciation is *functional* or *physical.* Functional depreciation results from obsolescence or inadequacy. Obsolescence arises from impaired comparative effectiveness of plant due to new inventions or improved methods, making possible equivalent results at smaller cost. Inadequacy arises from inability of a plant or unit of plant to perform the service demanded of it. So far as mechanical construction is concerned an inadequate machine may be of the latest type.

14. Effect of Composite Depreciation

Where composite depreciation exists, the plant continues to perform the same work as when new, but with a total investment in capital assets reduced by the amount of the depreciation reserve. This may be as much as 20% or 30% reduction from original cost.

What becomes of the capital thus returned through revenues and no longer forming part of the original investment in capital assets?

1. It may be reinvested in additional capital assets, which take the form of betterments or extensions to plant.
2. It may be employed to improve the working capital posi-

tion by being invested in inventories, supplies, etc., without incurring additional current liabilities.

3. It may be employed to retire a portion of the outstanding capital stock.

If additional capital assets are purchased in excess of total accrued depreciation, they must be financed either out of additional borrowings or out of reserved net profits.

When proper allowance is made for accrued depreciation the distinction between replacements and betterments works out automatically in the balance sheet.

For example, assume that the following balance sheet represents the status of Company "X":

BALANCE SHEET—COMPANY "X"—AS AT .....

Current Assets.....		$ 30,000	Capital Stock Outstanding	$110,000
Capital Assets...$100,000				
Less—Reserve for Depreciation..	20,000	80,000		
		$110,000		$110,000

The reduction in book value of capital assets has been offset by the increase in cash accumulated to make extensions to plant. If an extension is made, as suggested in (1), the balance sheet becomes:

BALANCE SHEET—COMPANY "X"—AS AT .....

Current Assets.....		$ 10,000	Capital Stock Outstanding	$110,000
Capital Assets— Original $100,000				
Less—Reserve for Depreciation..	20,000	80,000		
Extension		20,000		
		$110,000		$110,000

The $20,000 paid for the extension is the amount which was charged to profit and loss as depreciation expense at the time the depreciation reserve was credited. It represents a return of investment, because that much of invested

capital has been consumed in giving service. Had it been employed to improve the working capital position of the company the balance sheet would remain as shown in the first illustration above.

If the $20,000 thus returned is employed to retire outstanding capital stock, the balance sheet becomes:

BALANCE SHEET—COMPANY "X"—AS AT .....

Current Assets.....		$ 10,000	Capital Stock Outstanding.	$90,000
Capital Assets...	$100,000			
Less—Reserve for Depreciation..	20,000	80,000		
		$90,000		$90,000

15. Depreciation as Expense

Depreciation is an expense of operation to be deducted from gross income in determining net profit. It is a fixed charge. As the result of many court decisions it is now recognized that public utilities are justified in including in operating expenses a charge against income to cover accrued depreciation, to preserve the investment. The same principles apply to industry generally.

16. Depreciation vs. Repairs

As a rule, depreciation and repairs should be treated separately. If regarded as the same, it is necessary to credit the depreciation reserve (charging depreciation expense) with an amount sufficient to provide both for writing down the original cost of the asset and for repairs.

The chief function of the depreciation reserve is to provide for the return of the amount originally invested in an asset. If made to cover repairs and replacements of minor parts this function is obscured. It is better, ordinarily, to charge these to expense accounts than to try to equalize them by increasing the charge to depreciation expense, charging repairs to the depreciation reserve.

Some maintain that if repairs and upkeep are cared for there is no depreciation. Yet, however adequately current repairs are made, the cost of employment of capital assets can be ascertained only by averaging costs resulting from wear and tear, casualties, and so on, by means of depreciation allowances. Only thus can the investment in capital assets be preserved.

The Supreme Court of Oklahoma stated that current maintenance "represents only the cost of those units that had become so badly depreciated that they had to be replaced during that year," and found 7 per cent of "reproductive value" of physical property to be a proper annual depreciation allowance (118 *Pac.* 354).

The system of accounts prescribed by the New York Public Service Commission for public utilities requires that depreciation be estimated in gross, i.e., covering repairs as well as more extensive replacements. Against this estimate actual repairs are charged when made.

Thus, if on a predetermined basis gross depreciation for a given month is fixed at $40,000 and during that month $8,000 is expended for repairs, then $32,000 is credited to the depreciation reserve for that month. The entries are:

Repairs	$ 8,000.00	
To Cash		$ 8,000.00
For repairs made during month.		
Depreciation Expense	$32,000.00	
To Reserve for Depreciation		$32,000.00

This plan provides an equal charge to profit and loss from month to month, but it makes the amount reserved for depreciation dependent upon the amount expended currently for repairs.

The chief objection to this procedure is that it gives no assurance that original cost will be amortized during the life of a given asset, because the amount reserved for depreciation is a variable dependent on repairs.

Depreciation should be so charged that the original cost of an asset will be returned out of income during its useful

life, its cost being equitably spread as cost of production or service over its life.

This is expressed by the Supreme Court of the United States thus (*212 U.S. 1*):

> It [the company] is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning.

17. Average Life

Average life of capital assets is the time in years during which the depreciation of all parts will amount to original cost less salvage value. Assume that a plant consists of units whose original cost, estimated lives, and salvage values are:

Units	Original Cost	Estimated Life In Years	Salvage Value	Cost Less Salvage
Unit 1.....	$ 1,000.00	5	$ 100.00	$ 900.00
Unit 2.....	5,000.00	10	1,000.00	4,000.00
Unit 3.....	20,000.00	15	2,000.00	18,000.00
Unit 4.....	30,000.00	20	5,000.00	25,000.00
Unit 5.....	50,000.00	23	4,000.00	46,000.00

The depreciation cost each year for the various units is:

Units	Cost less salvage		Estimated life		Cost per year	
Unit 1.....	$ 900.00	÷	5 years	=	$ 180.00	
Unit 2.....	4,000.00	÷	10 years	=	400.00	
Unit 3.....	18,000.00	÷	15 years	=	1,200.00	
Unit 4.....	25,000.00	÷	20 years	=	1,250.00	
Unit 5.....	46,000.00	÷	23 years	=	2,000.00	
	$94,900.00	÷			$5,230.00	= 18.14 Yr.

That is, during a period of 18.14 years, cost (less salvage) expires through depreciation.

18. Depreciation Base

The depreciation base is the amount to which the depreciation rate is applied. The selection of the correct base is important, because together with the rate it determines the periodic charge. In case of private industries it is ordinarily the cost of the asset, that being the amount which must be returned to protect the investment.

19. Protecting the Investment

The following balance sheet shows the status of Company "B", a new concern:

BALANCE SHEET—COMPANY "B"—AS AT .....

Current Assets	$ 35,000.00	Capital Stock	$160,000.00
Machinery	25,000.00		
Building	100,000.00		
	$160,000.00		$160,000.00

The building will require replacement in 50 years and the machinery in 25 years, the annual depreciation on the building being $2,000.00, on the machinery, $1,000.00.

20. How Balance Sheet Changes

No allowance being made for depreciation, the first year's operations show a net profit of $15,000.00, which is paid out as dividends. This procedure is followed for 25 years, when the machinery requires replacing. Neglecting salvage, price changes, and so on, assume that cost of replacement is $25,000.00. To make the replacement, $25,000.00 is borrowed at 5 per cent. The balance sheet becomes:

BALANCE SHEET—COMPANY "B"—AS AT .....

Current Assets	$ 35,000.00	Capital Stock	$160,000.00
Machinery	25,000.00	Notes Payable	25,000.00
Building	100,000.00		
Deficit	25,000.00		
	$185,000.00		$185,000.00

Failure to allow for depreciation has caused a deficit of $25,000.00. The business must meet a fixed charge of $1,250.00 interest on notes payable. The useful life of the building is half gone, but this loss is not reflected on the balance sheet; so a further hidden deficit of $50,000.00 occurs.

Passing another 25-year period, both building and machinery require replacement, cost $125,000.00. No funds having been retained, it is necessary to borrow. After replacements are made the balance sheet becomes:

BALANCE SHEET—COMPANY "B"—AS AT .....

Current Assets	$ 35,000.00	Capital Stock	$160,000.00
Machinery	25,000.00	Notes Payable	150,000.00
Building	100,000.00		
Deficit	150,000.00		
	$310,000.00		$310,000.00

The concern now has a deficit of $150,000.00 and a fixed interest charge of $7,500.00. The equity remaining is $10,000.00, out of an original investment of $160,000.00. The yearly depreciation expense of $3,000.00 for 50 years accounts for this deficit.

21. Correct Procedure; Valuation Reserves

Depreciation being an operating expense, this expense is most easily distributed to the various accounting periods by means of "valuation reserves". If the year is assumed to be the accounting period in the above illustration, the entry providing for depreciation at the end of each year is:

Depreciation (or Profit and Loss)	$3,000.00	
To Reserve for Depreciation of Building		$2,000.00
To Reserve for Depreciation of Machinery		1,000.00
To carry the year's depreciation to expense.		

These reserves are "valuation reserves" because of

the relationship they bear to the assets. They evaluate them, showing what part of cost has been consumed by depreciation.

Although the credit balances in these reserve accounts remain open from year to year they represent neither liabilities nor capital. Their purpose is to record accrued depreciation and to make it possible to retain the capital asset accounts at original cost.

22. Effect on Balance Sheet

Company "B" now pursues the policy of charging revenue and crediting depreciation reserves each year. The balance sheet, at the end of 25 years is:

BALANCE SHEET—COMPANY "B"—AS AT .....

Current Assets	$110,000.00	Capital Stock	$160,000.00
Machinery	25,000.00	Reserve for Depreciation of Building	50,000.00
Building	100,000.00	Reserve for Depreciation of Machinery	25,000.00
	$235,000.00		$235,000.00

The balance sheet shows that net profits were distributed, but at the rate of $12,000.00 annually, instead of $15,000.00.

23. How Replacements Are Made

Assume that there is no way to secure the required cash to make replacements except by borrowing. A note is given to secure funds. The entries for this and to record the replacement are:

Cash	$25,000.00	
To Notes Payable		$25,000.00
For replacement loan.		
Reserve for Depreciation of Machinery	$25,000.00	
To Machinery		$25,000.00
To write off old machinery.		
Machinery	$25,000.00	
To Cash		$25,000.00
For purchase of new machinery.		

The balance sheet now appears:

BALANCE SHEET—COMPANY "B"—AS AT .....

Current Assets	$110,000.00	Capital Stock	$160,000.00
Machinery	25,000.00	Reserve for Depreciation of Building	50,000.00
Building	100,000.00	Reserve for Depreciation of Machinery	—
		Notes Payable	25,000.00
	$235,000.00		$235,000.00

In this instance no deficit is incurred when money is borrowed. The matter of borrowing or of managing to have cash on hand to avoid borrowing is one of financial policy.

24. Depreciation Reserve on Balance Sheet

On the balance sheet it is usually preferable to show the depreciation reserve as a deduction from the asset which it evaluates. The balance sheet shown above thus rearranged, is:

BALANCE SHEET—COMPANY "B"—AS AT .....

Current Assets		$110,000.00	Capital Stock	$160,000.00
Machinery		25,000.00	Notes Payable	25,000.00
Building	$100,000.00			
Less—Reserve for Depreciation	50,000.00	50,000.00		
		$185,000.00		$185,000.00

25. Allocating Depreciation to Departments

Depreciation expense is allocated to departments either directly or indirectly. The extent to which it can be directly allocated depends upon the extent to which equipment is itemized and classified for depreciation purposes.

If the depreciation charge for the whole plant is figured on total plant valuation, depreciation burden for departments must be determined upon some arbitrary basis of allocation.

Consequently, in so far as practicable, machinery and equipment should be segregated by departments as the first step toward a scientific plan of calculating depreciation costs and allocating them to departments.

As far as practicable depreciation should be made a direct departmental expense. Depreciation which cannot be ascribed to given departments because part of general overhead should be allocated to departments arbitrarily.

Depreciation charges may be allocated to departments on the basis of total valuation of equipment in each. It is necessary, however, to distinguish between strictly departmental property, for which a direct depreciation charge can be made, and property intended to promote the welfare of the plant as a whole, depreciation costs of which must be allocated arbitrarily to departments.

In ascertaining incidence of depreciation to departments, non-productive departments should be charged with their proper share of depreciation, both that which is specially applicable to their peculiar equipment and that which represents their share of general depreciation. It ultimately finds its way into cost of output, when the cost of operating non-productive departments is allocated to productive departments.

After all general expenses are allocated to the proper departments and after the costs of operating non-productive departments have in turn been distributed on some reasonable basis to productive departments, it is possible to ascertain total overhead for each productive department. This consists of two parts, namely: (1) direct departmental overhead, and (2) indirect departmental overhead, the latter in turn consisting of (a) general factory overhead secured when general operating expenses were allocated to all departments, productive and non-productive, and (b) costs of operating non-productive departments allocated to productive departments after general operating expenses have been distributed to all departments as in (a) above.

Total overhead thus ascertained for productive depart-

ments is the sum which must in turn be charged to output in the departments for the period.

26. Overtime, Idle Time and Depreciation Rate

Since all manufacturers experience vicissitudes resulting from changing business conditions, it is necessary to consider the effects of overtime and idle time on production costs by allowing for consequent changes in rates of depreciation. Overtime causes some increase in the rate of depreciation, whereas idle time has the reverse effect. The variation is illustrated in the rates prescribed by the Rulings Board of the Finance Division of the Bureau of Aircraft Production. The following are yearly rates allowed in connection with cost-plus contracts:

	1 Shift	2 Shifts	3 Shifts
Main buildings, brick and concrete	2½%	3%	4%
Substantial wooden buildings	5%	6%	7%
Factory equipment	10%	12½%	15%
Electric equipment	12½%	15%	18%
Heating and melting furnaces	6%	8%	9%
Machinery	7½%	10%	12%
Furniture and fixtures	10%	12½%	15%

The rates given in the first column are for an 8-hour day. Those for overtime were arrived at after giving consideration to the abnormal conditions under which war plants operated.

Overtime affords less than usual opportunity for ordinary repairs and replacements. Moreover, when there are two or three shifts per day machines operate under the supervision of different individuals, each of whom tends to leave minor matters of adjustment to his successor. Night work is harder on machines than is day work.

27. Allocating Depreciation to Output

The plant ledger should afford a complete record of plant, and be so arranged that its various subdivisions correspond with departments, as far as possible.

One or more divisions of the plant ledger may be used to record items of plant the depreciation cost of which cannot be regarded as departmental in nature and which must therefore be allocated to departments arbitrarily.

With the plant ledger thus organized, it is easy to determine depreciation allocable directly to departments, as well as that which is general in character.

After total annual depreciation cost for a given department has been found by adding to that which is directly departmental the proportion of general depreciation applicable to such department, total monthly depreciation for the department is found by dividing by 12.

This amount, representing monthly depreciation, must be distributed over orders worked upon in the department during the month in question. The manner of doing this depends on the method of burden distribution employed.

Thus if the new machine rate method is used, the departmental depreciation cost is allocated to machines operated in the department along with other costs, exclusive of direct labor and materials. A machine hour rate is secured which reflects total cost of operating a given machine one hour.

28. Illustration

Assume that a factory consists of four departments, "A", "B", "C", and "D". The general plant depreciation applicable to the manufacturing process is $2,000.00 monthly. In addition, the depreciation costs which can be determined on a departmental basis are as follows per month:

Department "A"	$500.00
Department "B"	800.00
Department "C"	350.00
Department "D"	600.00

These figures are found by proper computations based on data presented in the plant ledger.

It is necessary to fix upon some plan of allocating general factory depreciation to departments. It is assumed that the

allocation is made on the basis of floor space and that the floor space for the departments is as follows:

	Sq. ft.
Department "A"	20,000
Department "B"	40,000
Department "C"	15,000
Department "D"	25,000
	100,000

The amounts chargeable to the departments are:

Department "A", 20% of $2,000.00 or	$ 400.00
Department "B", 40% of 2,000.00 or	800.00
Department "C", 15% of 2,000.00 or	300.00
Department "D", 25% of 2,000.00 or	500.00
	$2,000.00

Total depreciation cost per month for each department is therefore:

	Departmental		General	Total
Department "A"	$ 500.00	plus	$ 400.00	$ 900.00
Department "B"	800.00	plus	800.00	1,600.00
Department "C"	350.00	plus	300.00	650.00
Department "D"	600.00	plus	500.00	1,100.00
	$ 2,250.00		$ 2,000.00	$4,250.00

Each manufacturing department is thus charged with its total depreciation burden and must make the proper distribution to its orders in process during the given month. In the financial records this depreciation expense represents a charge to Manufacturing and a credit to the Depreciation Reserve account, as follows:

Manufacturing	$4,250.00	
To Reserve for Depreciation		$4,250.00
To represent the month's depreciation cost chargeable to goods manufactured as one of the costs of manufacture.		

The Manufacturing account controls the cost ledger, so that the same amount is distributed over the order numbers whose records are shown in the cost ledger. It may be, of course, that the depreciation cost will not appear as a separate item on the cost sheets because it may be merged with other items of indirect cost, the total being shown in the form of a machine rate, or perhaps as a percentage of prime cost.

The manner in which each department makes the distribution of its quota of depreciation expense to jobs or order numbers depends on the method of allocating overhead employed. If the machine rate method is used, depreciation expense is combined with other indirect applicable to the department, and total indirect is allocated to machines or production centers. This total serves as the basis for determining a machine hour rate sufficient to exhaust the total month's overhead applicable to a machine or production center in a month's time. Other methods of allocating overhead may require special consideration, in order that satisfactory results may be secured.

Assume that the total number of machine hours for a given machine, running full time, is 360 for a given month, and that the total indirect applicable to that machine is estimated to be $720.00 for that month. Its rate per hour is, therefore, $720.00 ÷ 360, or $2.00. But if idle time for the month for this machine is 60 hours, the unapplied portion of the estimated burden amounts to 2 × 60, or $120.00. Furthermore, assume that in due time actual indirect for this month is ascertained to be $780.00, $60.00 in excess of estimated indirect. Also assume further that the machine's time during the month has been occupied exclusively upon four order numbers. Below is shown the account for indirect, also the cost ledger accounts for the four orders, after indirect has been distributed, first, by the direct rate, secondly, by the first supplementary rate, and, thirdly, by the second supplementary rate. Study of these accounts will indicate how principles are applied.

GENERAL LEDGER

Indirect—Dept. "A"

Actual indirect	$ 780 00	Direct rate	$ 600 00
		1st supplementary	120 00
		2nd supplementary	60 00
	$ 780 00		$ 780 00

COST LEDGER

Order No. 230 (70 Hours)

Direct rate	$ 140 00
1st supplementary	28 00
2nd supplementary	14 00

Order No. 231 (100 Hours)

Direct rate	$ 200 00
1st supplementary	40 00
2nd supplementary	20 00

ORDER NO. 232 (70 HOURS)

Direct rate	$ 140	00			
1st supplementary	28	00			
2nd supplementary	14	00			

ORDER NO. 233 (60 HOURS)

Direct rate	$ 120	00			
1st supplementary	24	00			
2nd supplementary	12	00			

The hours indicated in parentheses are the actual number of hours spent by the machine on the different orders. The "direct rate" charge is made on the supposition that the machine operates full time. The "1st supplementary" charge distributes the balance of estimated indirect resulting from idle time. The "2nd supplementary" charge distributes the excess of actual over estimated indirect. The "1st supplementary" rate is secured by dividing unapplied burden resulting from idle time, $120.00, by the number of operating machine hours for the month, 300, giving, as the first supplementary rate per hour, $0.40. The "2nd supplementary" rate is secured by dividing the excess of actual indirect over estimated indirect, $60.00, by the number of operating machine hours for the month, 300, giving as the second supplementary rate per hour, 20 cents. The various distributions are shown in the above accounts.

The amounts credited to the accounts for departmental indirect, in the general ledger, are in turn charged to the Manufacturing account.

Departmentization

29. Meaning of Departmentization

Departmentization is so planning a business that its important activities can be accounted for separately. Departmentization is a problem of organization, but the scheme of accounts must be such as to afford necessary information relative to departmental activities.

To accomplish subdivision of costs along departmental lines, all revenues and expenses must be analyzed in accordance with the plan of departmentization adopted.

30. Purpose of Departmentization

Departmentization subdivides the activities of a business so that each important one is placed in a position similar to that of an independent concern. Thus full responsibility is delegated to department heads, they being held to account for all financial and operating matters dependent on their policies and decisions.

If all expenses and revenues cannot be allocated to departments because data furnished does not allow sufficient analysis to make the subdivision of expenses and income among departments, only partial responsibility for results can be placed on department heads.

If departmentization is carried out fully, each department acts as a separate enterprise, handling its own product and incurring its own expenses. Thus it may be held responsible for results secured.

The person responsible for such results is the department foreman. He keeps expenses as low as possible consistent with effective operation. If he requests outlays on capital assets he should be informed of their effect on production costs in his department.

Departmentization must conform to differences in activities carried on. The activities of each department are such as to require a separate accounting. The method of such accounting depends on special requirements within the department. Thus in the packing industry three methods of accounting are employed:

(*a*) Ordinary-job or process costing, in which material, labor and expense costs are added together.
(*b*) Major and by-product costing, in which materials of known value are broken down into several parts consisting of (1) products and (2) by-products.
(*c*) Joint-product costing, total costs being broken down into parts, none of which is a major product.

When costs are determined by methods so different the departments must be so organized that the diverse activities will be accurately accounted for. Costs applicable to a given product must be accumulated with reasonable accuracy, however much it may vary from other products in the processes of manufacture.

Departmental statements should cover both financial and operating conditions of the department. Each foreman should be shown how much money he is using, also how the amount of each class of expense charged to his department is ascertained. The head of the sales department is also interested in this information, because satisfactory turnover of sales on the investment in capital assets depends largely on his plans. Others interested are the plant manager and general executive officers.

Departmental costs aid purchasing agents to determine what they can pay for raw material in order to secure a reasonable profit on sales. They aid the sales department in computing probable margins of net profits.

31. Expense Distribution

Expenses are either (*a*) direct departmental or (*b*) indirect. Indirect expenses are distributed to departments on some arbitrary basis.

In so far as possible, expenses should be applied direct to departments, leaving a minimum amount to be distributed arbitrarily.

Expenses should be given a suitable classification; then such as can be charged to departmental accounts should be so charged. The remainder should be distributed arbitrarily. This arbitrary distribution is made on a distribution sheet containing one more column than there are departments. To assist in checking the accuracy of the work, totals are placed in the first column.

Form 326 shows a classification of accounts suggested by F. E. Webner. It should be revised as to details when applied to a specific industry. Divisions 38 and 39 show expenses incident to the use of capital assets. Since expenses arising from the use of capital assets are not included in "Direct Charge to Production," all such costs must be arbitrarily distributed.

Relative to expense distribution:

1. Maintenance costs should be spread over departments on the basis of the investment in each department.
2. As far as possible depreciation affecting a given department should be charged to that department. That remaining should be prorated over the entire plant on some reasonable basis.
3. When all expense not directly allocable to departments is determined for a building, this may be distributed to departments on the basis of square feet of floor space occupied by each department.
4. After total costs applicable to a building are determined, the rate per square foot of floor space is ascertained by dividing this total by the number of available square feet of floor space in the building.
5. Floor space is divided among departments on the basis of square feet occupied by each department.
6. Cost of floor space not allocable directly to departments should be divided among the departments benefiting therefrom.
7. Periodically, costs not represented by transactions entered on the general books must be summarized and brought on the books. A computation sheet may be used to contain

the details, and therefrom the entries to be made in the general books are compiled. These entries consist of charges to the various department expense accounts, as shown on the computation sheet, and credits to the proper reserve or accrual accounts.

32. Distribution of Capital Asset Expenses Illustrated

Power plant illustrates the method of handling expenses arising from use of capital assets. If power is purchased it is charged to departments on the basis of amount used by each department; if produced by one of the departments, the cost must be allocated to the departments benefiting on the basis of units used by each.

Sometimes power cost may be treated as direct departmental expense, as, for example, where the amount consumed by each department is metered.

To determine cost of producing a unit of power, production of power should be made the work of a separate department, to which is charged the proper share of capital asset costs, maintenance, repairs, depreciation and other costs necessary to power production.

If the power producing department furnishes other service than power, the correct proportion of its costs must be allocated to these additional activities.

It is well to remember that, in addition to capital asset costs, there enters into cost of power production cost of fuel and supplies consumed.

If machine rates are used, distributing power charges to machines is made on the basis of number of power units consumed by each machine. This is ascertained by means of a power recording instrument known as a dynamometer, between the machine and the source of power.

The purchasing and stores departments are other illustrations of departments which must be organized with a view to the ultimate distribution of their costs to other departments. In both the problem of capital asset costs is present.

Form 326

Classification of Manufacturing Expenses

CLASSIFICATION OF MANUFACTURING EXPENSES

- Direct charges to production departments
  - 1. .....Department A
  - 2. .....Department B
  - 3. .....Department C
  - 4. .....Department D
  - 5. .....Department E
  - 6. .....Department F, etc.
- Preparation and supervision
  - 7. Plant factor { a land / b buildings
  - 8. Engineering department
  - 9. Purchasing department
  - 10. Stores department
  - 11. Plant management
  - 12. Power department
  - 13. Pattern department
  - 14. Time and cost department
- Indirect labor known generally as non-productive
  - 15. Tool making and repairing
  - 16. Inspectors
  - 17. Carpenters } where not directly applied
  - 18. Painters }
  - 19. Millwrights
  - 20. Porters and messengers
  - 21. Truckers
  - 22. Elevator men
- 23. Fuel other than for main power plant
- 24. Taxes other than on plant
- 25. Insurance other than on plant
- 26. Water
- 27. Light
- 28. Oil and waste
- 29. Factory supplies, when not specifically applied to departments
- 30. Technical library
- 31. Association costs
- 32. Experimental work
- 33. Incoming transportation charges, when not absorbed through stores
- 34. Over, short and damage, on orders in process
- 35. Variation of weights and measures on stores
- 36. Factor of safety
- 37. Miscellaneous manufacturing expense
- 38. Maintenance (where various factors like plant power, machine time, etc., are used these costs are applied thereunder)
  - a Factory buildings
  - b Power plant
  - c Electric plant
  - d Shafting, hangers and belting
  - e Machine tools
  - f Small tools
  - g Jigs and templates
  - h Shop furniture and fixtures
  - i Patterns
  - j Miscellaneous shop equipment
- 39. Depreciation and obsolescence (where various factors like plant, power, machine time, etc., are used these costs are applied thereunder)
  - a Factory buildings
  - b Power plant { 1 engines / 2 boilers / 3 generators
  - c Electric plant
  - d Shafting, hangers and belting
  - e Machine tools
  - f Jigs and templates
  - g Shop furniture and fixtures
  - h Air system { 1 compressors / 2 pipes and fitting
  - i General equipment not specified
- 40. Pro-rata of administrative costs
  - a Office expense
  - b Executive salaries and expense
  - c Interest { 1 on investment / 2 on borrowed money
  - d Postage
  - e Law expense
  - f Telegraph and telephone
  - g Printing and stationery
  - h Subscriptions and donations
  - i Experimental

33. Determining Departmental Capital Asset Costs

Organization of a concern as to functions and activities is essential to correct departmentization, which follows as a logical result. Such resulting departments are of two types, as follows:

1. Those producing output or services (productive departments).
2. Those supplying to such productive departments power, light, technical skill, etc., (non-productive departments).

Costs of operating non-productive departments are distributed to productive departments to ascertain total costs of operating productive departments.

34. Expenses Incident to Capital Asset Investments

Among the expenses attributed to capital assets are the following:

1. Insurance
2. Taxes
3. Repairs
4. Depreciation

If capital assets are rented the above costs are displaced by rent expense.

1 and 2. *Insurance and taxes.* The investment in capital assets in the various departments serves as an equitable basis for distributing insurance and tax expenses. Depending on how insurance is taken out, whether on the total investment or separately on capital assets and on goods in process, it is or is not desirable to include, along with the amount invested in capital assets, the average amount invested in goods-in-process.

3. *Repairs.* If possible, repairs should be charged direct to departments. Those not so chargeable may be distributed on the basis of the investment in capital assets in the department benefited.

4. *Depreciation.* Same principles apply here as in case of "repairs."

35. Information Necessary for Departmental Control

Department heads should be informed regarding all facts respecting the investment in capital assets in his departments. Such information should take the form of periodic reports giving complete summaries of departmental costs. The activities of each department must be regulated with a view to the fact that it is a link in the enterprise, not a separate business. Not only foremen of operating departments but also the head of the sales department are interested in costs of such operating departments, the latter because knowledge of such costs enables him to plan selling prices, prepare sales campaigns, and so on.

Purchasing should be done with a view to departmental costs; otherwise the amount permissible to offer for materials is not known because production costs are not known.

The spread between costs and selling prices must allow for a return on capital as well as for other costs. This margin can be safeguarded only if all costs of all stages of the productive process are known. In each such stage some person must be held responsible for so employing invested capital that his activities will contribute toward a favorable general outcome.

Classification

36. Principles of Account Classification

Classification of accounts into primary subdivisions required in balance sheets and profit and loss statements is fundamental. Such classification shows information without which general tendencies within the enterprise cannot be learned. Being basic, it may be termed *primary classification*. In a primary classification each account is as broad as the business because everything belonging to the group described by the account's title is included under that account. Examples of primary accounts and their explanation are shown as follows:

1. Cash
2. Merchandise inventory
3. Selling expenses
4. Rent
5. Insurance
6. Plant
7. Purchases
8. Sales

1. *Cash* is not usually subdivided according to activities, representing neither profit nor expense. For convenience, it may be separated into:

   (*a*) Cash on hand
   (*b*) Cash in bank
   (*c*) Cash at branches
   (*d*) Petty cash
   etc.

2. *Merchandise inventory* is frequently sub-classified, to ascertain the profitableness of each of two or more activities. In case of general retail enterprises illustrations are:

   (*a*) Inventory of clothing
   (*b*) Inventory of furniture
   (*c*) Inventory of books
   (*d*) Inventory of groceries

   This may be termed a secondary classification to distinguish it from the primary classification, which includes the entire merchandise inventory.
3. *Selling Expenses* fall into a secondary classification corresponding to merchandise groups.
4. *Rent* may be given a similar secondary classification, but not all rent expense is incident to merchandising operations. Part should be allocated to administrative expense. Yet other subdivisions of rent may be required, depending on the nature of the business. Being paid usually as a single item, the allocation of rent to a secondary classification is made arbitrarily.
5. *Insurance* resembles rent expense, being paid usually as one item, then distributed arbitrarily to a secondary classification.
6. *Plant* aids various activities, operating and non-operating. Expenses of non-operating departments, such as power, storage, etc., must be allocated arbitrarily to operating departments. Then combined with the direct plant expenses of operating departments, total plant expenses applicable to each operating department are shown, and the amount of capital asset expense incident to each activity is determined.

NOTE: Because selling expense, rent, insurance, etc., are here said to fall into subsidiary classification it does not necessarily mean that in the actual classification of accounts secondary accounts for selling expense, rent, insurance, etc., are to be kept. When the subdivision is made, the amounts allocated to departments may be carried to the respective departmental trading accounts when the books are closed, without first having been carried to secondary nominal accounts.

37. Classification Based on Function

Subdivision of assets, liabilities, revenues and expenses, to constitute classification, must be based on some function or activity. Operating functions comprise buying, preparation for sale, and sale of services or goods.

Non-operating functions aid in the purchase, preparation, and sale of goods.

In case of merchandising establishments purchasing, storing, and selling are operating functions; providing shelter and heat are non-operating functions. In themselves, non-operating functions produce no profit. Only operating functions produce profit, but it cannot be ascertained until the cost of all contributory services is charged against revenue.

Having outlined the operating functions and the contributory non-operating functions, the classification of accounts should be designed to record the necessary data concerning them. Form 327 shows how costs of non-operating or contributory functions are related to costs of operating functions.

The arrangement in Form 327 is based on the assumption that the cost of the eight non-operating functions are in no instance chargeable directly to departments, but must be allocated thereto on some arbitrary basis. In case any of these are directly chargeable to operating departments the diagram requires revision. Thus if the departments are housed separately in buildings for which separate rentals are paid, the diagram is as shown in Form 328.

There are, then, two groups of costs:

1. Operating, which ordinarily are chargeable direct to departmental accounts.
2. Non-operating, divisible into:
   (*a*) Those chargeable direct to departmental expense accounts.
   (*b*) Those which must be allocated to departmental expense accounts arbitrarily.

The exact distribution of costs among these groups depends on the nature and organization of the business, and the method of treating various items of expense.

The chief problem is determining whether a particular non-operating cost falls in the group which must be allocated arbitrarily to departments, or in the group which can be allocated directly to departments.

It is possible that some items listed in the diagram (Forms 327 and 328) as non-operating may, under certain conditions, be departmental operating costs. Thus if power is used in preparing goods for market and is metered so that each department is charged directly for the amount consumed, it should be regarded as a departmental operating cost.

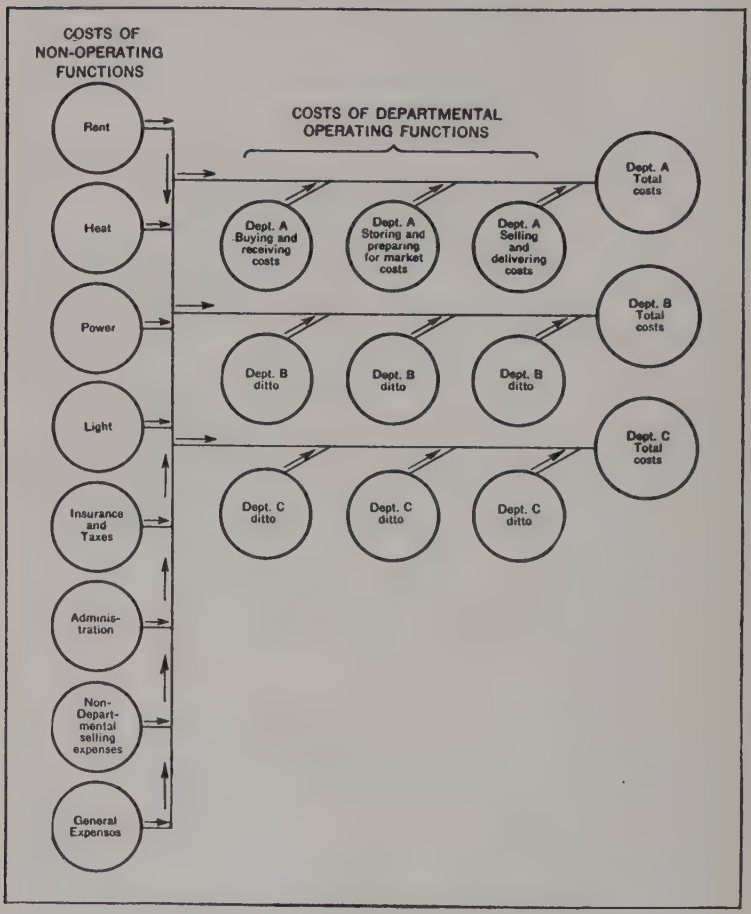
A classification of accounts must be arranged to reflect all facts relative to costs in order that they may ultimately be charged or allocated to the proper departments.

38. The Limits of Classification

Theoretically, classification may be carried to a point of extreme refinement; practically, however, it should be carried only so far as to provide data necessary in making analyses of important activities. A merchandising concern dealing in four fairly well defined groups of commodities should not be satisfied with such broad analysis as may be secured from the general balance sheets and profit and loss statements. On the other hand, it cannot profitably go farther than to secure complete analysis of each of the four branches of its trade; the results secured in doing so would not justify the outlay.

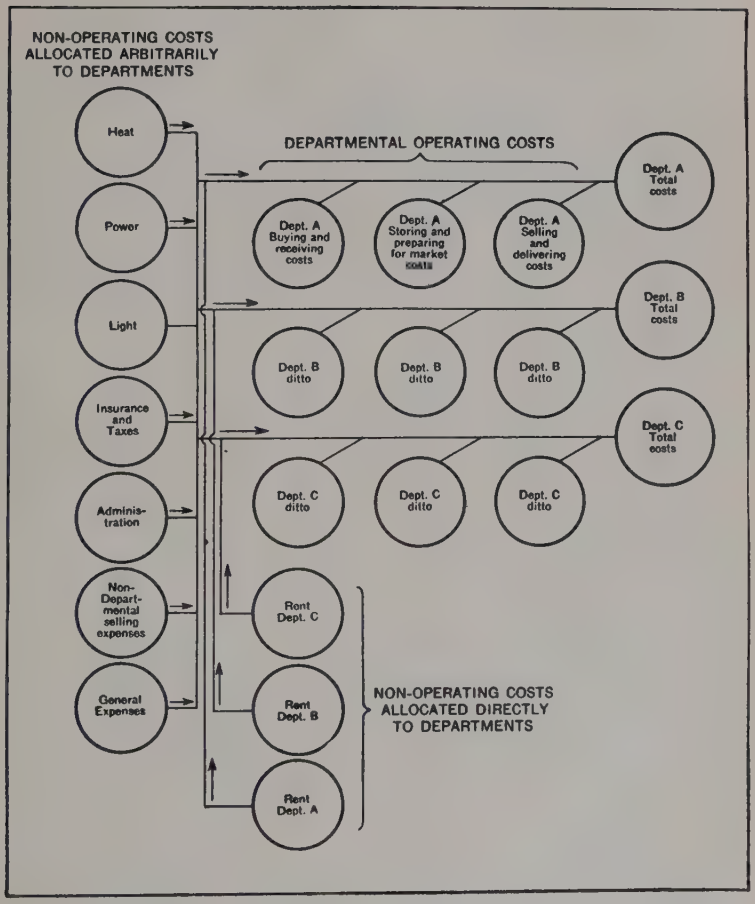
Form 327

Relation of Costs of Non-Operating Functions to Costs of Operating Functions



Form 328

Treatment of Non-Operating Costs Where Departments Are Housed Separately



In determining to what extent classification of accounts (hence of accounting data) should be carried, factors to be considered concerning a business are:

1. Its nature
2. Its size
3. Its organization

1. In determining the general structure of the classification of accounts consideration of the nature of the enterprise is fundamental. The general structure of a classification of accounts for one railroad company should resemble that for another railroad company, even though the two companies vary greatly in size. The classification of accounts for a retail grocery concern should not resemble that for a railroad concern because they are fundamentally different kinds of enterprises.

2. The size of a concern, although it may not affect the general outline in accordance with which its classification of accounts is constructed, does determine largely to what extent sub-classification and subdivision of accounts ought to be carried. A telephone company having gross revenues of $50,000.00 a year does not require as detailed a classification of accounts as one having gross revenues of $10,000,000.00 a year.

3. The accounting system must be coordinated with the organization, to locate responsibility. It is because the organizations of concerns engaged in the same lines of business are usually similar that their accounting classifications are similar.

39. Classification Illustrated—Retail Meat and Grocery Business

Below is shown a simple classification of accounts for a retailer selling meat and groceries:

Assets	Liabilities
11. Cash on Hand	51. Notes Payable
12. Cash in Bank	52. Accounts Payable

15. Accounts Receivable
16. Inventory of Meats
17. Inventory of Groceries
18. Supplies
21. Prepaid Expenses
31. Store Fixtures, Equipment, and Tools
32. Delivery Trucks, Wagons, and Horses
33. Store Building and Land
40. Other Assets

53. Accrued Expenses
54. Bank Loans
60. Mortgages
70. Other Liabilities

PROPRIETORSHIP

81. Proprietor's Capital Account
82. Proprietor's Drawing Account
86. Profit and Loss

INCOME

91. Sales—Meat
91*a*. Sales—Groceries
92. Interest Received
93. Other Income

EXPENSE

101. Cost of Sales—Meat
101*a*. Cost of Sales—Groceries
102. Salaries
103. Rent Paid (when building is owned)
104. Wages of Clerks
105. Heat, Light, Power
106. Ice—Refrigeration
107. Advertising
108. Wrappings and Containers
109. Other Store Expense
109*a*. Delivery Wages
109*b*. Delivery Expense
109*c*. Interest Paid
109*d*. Miscellaneous Expense
109*e*. Depreciation—Building, if owned
109*f*. Depreciation—Fixtures and Equipment
109*g*. Bad Debts Expense

In small retail stores inventories, sales and purchases, and possibly a few other items of expense can be allocated directly to departments; but for most expense items shown in the above classification direct allocation to departments is impossible because it is spread indiscriminately over the departments. This is true of such items as rent, wages of clerks, heat, light and power, refrigeration, delivery expense, and so on.

In large establishments having greater differentiation of work and service, many of these become direct departmental expenses. This is indicated in the classification of accounts by having departmental expense accounts, as,

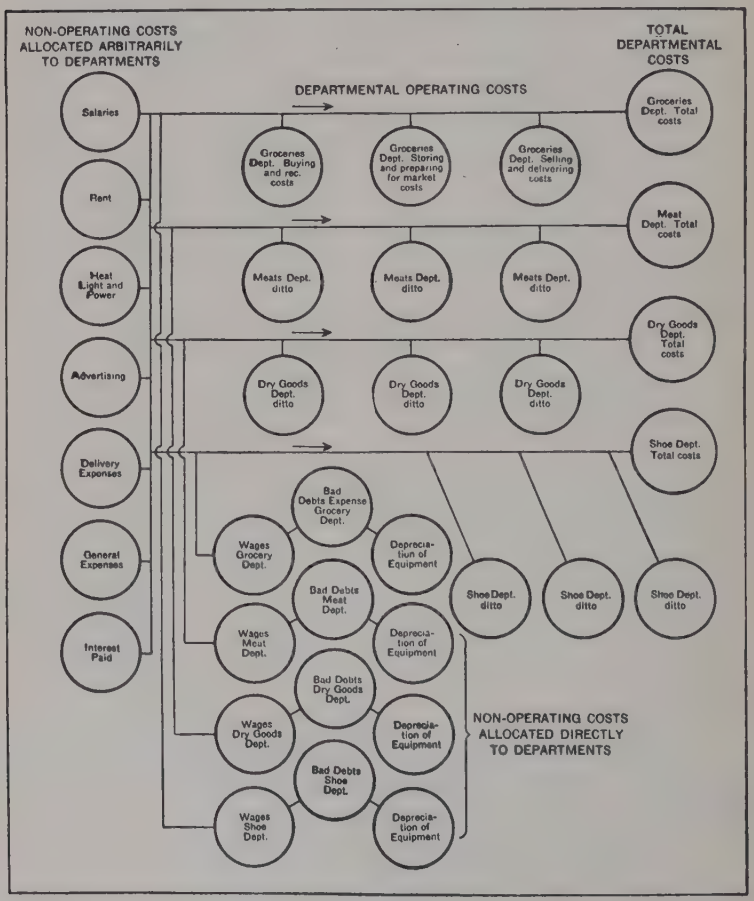
102. Salaries—Meat Department
102*a*. Salaries—Groceries Department

107. Advertising—Meat Department
107*a*. Advertising—Groceries Department

Nevertheless, some expenses must be allocated to departments arbitrarily. "Rent" or "Depreciation Expense" is an

FORM 329

TREATMENT OF COSTS WHERE CONSIDERABLE DIVISION OF WORK EXISTS



illustration, as well as most other expenses arising from the use of capital assets.

The treatment of expenses in case of a store large enough to permit considerable division of work and service is diagrammatically illustrated in Form 329.

Plant Records

40. Purpose of Plant Records

The component parts of capital assets are so many and various that adequate control over them is impossible without some form of records. Such records should furnish reliable data concerning the purchase, age, estimated life, depreciated condition, etc., of all parts of plant.

Plant records must be in agreement with the classification of capital assets. Since the classification of capital assets adopted should be functional in character, i. e., based on the uses of the assets whose values are recorded, the plant records must be made to reflect the basic subdivisions of plant, thus affording information most likely to be needed to aid in management.

In designing an accounting system to control the plant, the aim should be to supply the responsible party with accounting and statistical information relative to the investment in plant such as will enable management to make the analysis of plant costs necessary to the adequate control of such expenses.

41. Nature of Plant Records

Preferably, plant records should be part of the double-entry system. This insures accuracy and requires that the records be kept up to date. Sometimes, however, it is advisable not to attempt a strict tying up of the plant ledger in this way, the agreement between the detailed plant records and the plant account in the general ledger being checked up periodically by means of a sheet summarizing the details found in the plant records.

Sometimes plant records are begun on a scale so detailed that when a period of depression arrives they are neglected because of the expense of operating them. Anything which does not serve a useful purpose should be eliminated.

What facts to record in the plant record depends on the character of the plant and the nature of the information required. The following is suggestive:

(1) Description of the unit
(2) Symbol of the unit
(3) Maker
(4) Vendor
(5) Purchase order number
(6) Department number
(7) Capacity
(8) Date of installation
(9) Cost—
    (*a*) Invoice or net
    (*b*) Freight
    (*c*) Installation
    (*d*) Attachments
(10) Estimated life
(11) Depreciation rate in %
(12) (*a*) Monthly
     (*b*) Yearly
(12) Location as to building, floor, etc.
(13) Appraisal reproduction value
(14) Depreciation reserves by years
(15) Estimated scrap value
(16) Book value, or remaining value

Although it may not be desirable to show all this information, the complete history of a unit should appear.

42. Form of Plant Ledger

The plant ledger should usually be set up in form of either a loose leaf book or a card record. It is then possible to carry only as many pages or sheets as required for current purposes and to make additions only as needed.

One industrial concern keeps its inventory record of equipment on one form of card (Form 330), but the cards

are in four colors—buff for machinery, blue for tools, salmon for factory fixtures, white for furniture. This concern has, however, permitted all but the buff ones (machinery) to go into disuse, the multitude of small items entering into the other accounts being too numerous to handle on individual cards. The concern's statistician states:

For the time being we are simply listing upon blank 8x5 cards monthly accessions to the tool, factory fixtures, and furniture accounts according to departments without any effort to describe the items, except only in those few cases where the accessions amount to more than one or two hundred dollars. A similar record is kept of additions to other fixed assets, such as building, building fixtures, etc.

The buff cards that are used for the machinery inventory contain a number of spaces that are not used. Practically all that we enter is the description and symbol of the machine, the department, and its cost.

FORM 330

INVENTORY RECORD OF EQUIPMENT

Symbol	Description	Dept. No.	Location
Type	Maker	Capacity	Installed
Cost	Rate per Hour	Depreciation	
F.O.B plant $	Estimated life	Years	
Erection $	Monthly depreciation $		
Total cost $	Yearly "	%	

Form 331 shows the form of machinery record used by a large concern which manufactures firearms.

FORM 331

MACHINERY RECORD

Insurance Number	Machinery Record	Asset Symbol
Description		
Weight	Floor Space	Appraisal 1922 Vol. Page Date Rec'd
Maker		Maker's No. Drawing No.
Vendor		Pur. Order No. Voucher No.

Location				Values				
Date	Bldg.	Tract	Floor	Date	Asset Order No.	Detail	Cost	Total
						Inv. or net		
						Freight		
						Installation		
						Attachments		
				11–1–1922	Appraisal	Additional Value		

(Front)

FORM 331 *(Continued)*

MACHINERY RECORD

Insurance Number			Cost of Production Less Depreciation 11-1-22.... Depreciation Year Old Class						Asset Symbol
				Depreciation		Addi-	Amortization Add. Value		Value Less
Date	Class	Rate %	Cost	Amt.	Total	tional Value	Amt.	Total	Depreciation

(Reverse)

Form 332, on the following page, shows a "Record of Minor Equipment" used by a large manufacturer of farm machinery. The same form is also used for buildings.

FORM 332

Name of Company

RECORD OF MINOR EQUIPMENT

..... Works
Building No. ..... Floor No. ..... Card No. .....
Description .....
.....
.....
.....
.....
.....
.....
.....
Date identified at works.....
Appraisal reproductive value, invoice No. ..... Page No. ..... $.....
Cost value (new)..... $.....
Summary reference, exhibit..... Page.....

The same company uses the form shown in Form 333 for machinery.

FORM 333

RECORD OF MACHINERY

.....Works Machine No. .....

INSTALLATION OF MACHINERY

Building-power—Machine-tools

Name and description of machine.....
.....
.....
.....
.....
Made by..... Maker's No. .....
Purchased from.....
Date installed.....Building.....Main plant Floor.....
Cost Material $..... " .....Grey iron fdry. No. 1—No. 2
" Labor ..... " .....Mall. Fdry. .....Twine mill
" Burden ..... Shop order or account No. .....
" Total $.....

.....
Foreman

.....
Works auditor

Form 334 shows the "Property and Depreciation Record" used by a large industrial concern engaged in manufacturing car springs, etc.

FORM 334

Name of Company

Pittsburgh Works

PROPERTY AND DEPRECIATION RECORD

Unit No. 34 L. 1

NAME Pattern Storage Building

DESCRIPTION
Construction —Iron clad, two story
Dimensions —51′ x 86′ (3 bays wide and 5 bays long)
Foundation —Concrete piers
Walls —Galvanized iron
Floors —Plank
Roof —Cement tile

Description of Additions, Transfers or Discards	REF.	a/c Charged	Property Value			Depreciation			
			Detail	Total		Estimated for Year	Rate	Detail	Total
				Amount	Date				
Appraisal Dec. 31, 1916			$	$ 9,700 00				$	$3,700 00
15′ Addition	S/A-P243	Cap.	2,500 00	12,200 00	12/31/23	1917	3%	291 00	3,991 00
						1918	"	291 00	4,282 00
						1919	"	291 00	4,573 00
						1920	"	291 00	4,864 00
						1921	"	291 00	5,155 00
						1922	"	291 00	5,446 00
						1923	"	291 00	5,737 00
						1924	"	366 00	6,103 00

FORM 335

RECORD OF INVENTORIABLE EQUIPMENT

Name of Company

Pittsburgh Works
Unit No. 1A

NAME Miscellaneous laboratory equipment
DESCRIPTION See group sheet following

Description of Additions, Transfers or Discards	Reference	a/c CH'G'D	Property Value			Depreciation			
			Detail	Total Amount	Date	Estimated for Year	Rate	Detail	Total
Balance Dec. 31, 1922			$	$2,111 91			Inventoriable		$

Form 335 shows a similar record employed by the same company, but in this case the item in question is inventoriable and the details are listed in a detail sheet, Form 336.

FORM 336

DETAIL SHEET

Name of Company Pittsburgh Works

DETAIL OF PROPERTY GROUPS

Unit No. 1 A

NAME Miscellaneous laboratory equipment

						Amount	Date Discarded
Analytical bala	nce, Chri	stian- Be	cker				
Multi unit com	bustion f	urnace					
Portable bristol	indicatin	g pyrom	eter				
3 Platinum cruc	ibles						
Water still						$2,111 91	
Gas hot plate							
Welders gauge							
Electric oven							

The record shown in Forms 330, 331, and 332, is kept by units of equipment. A separate record is kept for each of the ten plants. These records cover all but real estate and patterns, the latter being charged direct to the job for which constructed.

In Form 334, note that the value used is the appraisal value as of December 31, 1916. For property bought before December 31, 1916, this company uses, as the basis of ac-

counting, "sound value." But for property purchased after that date "cost" is used. By sound value is meant reproduction cost less depreciation.

This concern carries a Property account in the general ledger containing all fixed property values, tangible and intangible. The property and depreciation record is checked up yearly with the general ledger property account; but no direct control is exercised over the plant record, as where the general ledger property account is made a control account. Annually a summary of property changes and of depreciation charges is made for each plant. By means of this a reconciliation is effected between the general ledger property account and the plant records.

For depreciation purposes, this concern has established five rate groups—3%, 5%, 7½%, 10%, and 20%.

The 3% rate applies to steel and brick buildings, open hearth furnaces (rebuilding being taken care of by a reserve for furnace rebuilding), oil tanks, etc.

The 5% rate applies to power equipment—boilers, engines, generators, motors; also to foundry and machine shop equipment—charging machines, overhead traveling cranes, gas producers, and machine tools; yard locomotives and rolling stock.

The 7½% rate applies to foundry equipment.

The 10% rate applies to hot metal ladles, jerring machines, etc.

The 20% rate applies to motor trucks, grab buckets, etc.

This concern capitalizes only the direct cost of capital assets.

43. How Plant Ledger Should Be Controlled

Preferably, the plant ledger should be controlled by a control plant account in the general ledger. If the balances shown in the plant ledger for the different units of plant is the net depreciated value, the agreement between the sum of such balances and the control plant account is established by deducting the balance in the depreciation reserve account

from the balance of the control plant account, because depreciation written off for the units of plant recorded in the plant ledger is represented by the depreciation reserve account.

When plant becomes well seasoned so that replacements offset further increases in the depreciation reserve, the status of normal depreciation is reached. The reserve indicates the amount of composite depreciation existing at any time.

44. Procedure Advocated by United States Chamber of Commerce

The following is quoted from "Depreciation", a pamphlet issued by the United States Chamber of Commerce.

It is not unusual to find assets grouped under such general captions as Buildings, Machinery and Equipment. The term "Buildings" may include wood, concrete, steel or brick structures designed for heavy use or light, may include fencing and wood bins, drainage systems and docks. The term "Machinery" may comprise electrical generators and steam engines, hydraulic presses and steam hammers, lathes, planers and boring and milling machines, woodworking machinery and small tools. The "Equipment" may vary from a locomotive train to pickling tanks, from glass furnaces to fire systems. The span of usefulness of these assets may vary from three years to thirty-three, yet all will bear a 3 per cent, 5 per cent or 10 per cent rate of depreciation, nor will it be possible to determine the depreciation record or history or the undepreciated value of any specific unit or type of property.

A classification of property is a prerequisite to the proper recording of depreciation.

Tax regulations, as well as ordinary accounting propriety, require that the allowance for depreciation should be computed and charged off with express reference to specific items, units or groups of property, each item or unit being considered separately or specifically included in a group with others to which the same factors apply.

Hence a proper record of depreciation requires that the specific items and units of property be enumerated and classified by kind, group, or department, and that their original cost be ascertained,

as well as the accumulated depreciation and the remaining useful life.

To do this will not be easy for an established concern accustomed to taking depreciation on a general grouping of property, such as Buildings of Machinery, and for such a concern "the splitting up and allocation of the old capital outlay must be approximate." Such allocation will, however, be greatly assisted by a competently made appraisal.

A complete record and history of depreciation as well as of plant and equipment can be secured through the property ledger, which aims to do for plant and equipment what the perpetual inventory record does for stock on hand.

Such a property ledger will tie up with the general books of account, and will supply the detail for the total cost of property, the depreciation written off in any one year, the additions, renewals and disposition of property, the amount in the depreciation reserves, the estimated scrap value, and the net remaining sound value of property.

In addition, the property ledger will contain a brief description of all property, where located, plant identification, the name of manufacturer and manufacturer's number, from whom and when purchased, the total cost, including freight and installation charges, the estimated useful life of equipment and rate of depreciation, and it may likewise have a record of repairs, replacement values and a tabulation of monthly depreciation.

The property ledger can be conveniently compiled in card or loose leaf form, and each card or sheet ought to last from twenty to thirty years. Practically the same form can be used for departmental and final summaries of plant and depreciation. The complete financial, plant, and performance history of each item of property secured in this way guides future outlays upon plant, helps the accurate determination of loss or gain or specific assets, is of some importance in credit applications, simplifies the compiling and checking of tax and annual statements, and is invaluable in the event of a fire loss. The surprising thing is that there is still a comparatively large number of concerns operating without such a property ledger.

The arrangement of the form of property ledger as well as its size, etc., will depend on the ingenuity of the executive or cost accountant designing it, as well as upon his sense of what is important information for his particular requirements, industry or plant. It may be desired to compress all the information on a

small card, using both sides, or it may be considered wise to keep track of monthly depreciation, the cost of repairs or replacement values. These are merely details to be adjusted to and by individual needs.

To illustrate (Form 337) the use of the property ledger, it is supposed that a 50 H. P. Steam Engine is purchased from Evans and Clark for use in the Trimming Department, S. E. —T. 1799 is its plant number, S. E.—symbol for Steam Engine, T. for Trimming Department. This plant number appears on the name plate of machine where it can be easily seen. If the asset is frequently moved about the plant, it will be given a location number. The manufacturer is the Brighton Engine Co., the manufacturer's number B-93217. Its useful life has been determined at 15 years.

The invoice for the engine comes to $2,500.00, freight charges $15.00, installation $185.00, a total cost as of January 1, 1921, of $2,700.00. The scrap value is computed at $150.00, leaving a wearing value of $2,550.00, and an annual depreciation of $170.00, arrived at by dividing the wearing value by the useful life of 15 years.

The record of the engine is as follows:

1921. Normal depreciation of $170.00, no additions, no renewals. At the end of the year there will be $170.00 in the depreciation reserve and a net remaining value of $2,380.00. (Wearing value $2,550.00 less depreciation reserve $170.00).

1922. Normal depreciation of $170.00, no additions, no renewals. At the end of the year there will be $340.00 in the depreciation reserve and a net remaining value of $2,210.00.

1923. Normal depreciation of $170.00, no renewals, an addition in the way of a lubricator, installed October 9, at a cost of $150.00. At the end of the year there will be $510.00 in the depreciation reserve and a remaining value of $2,190.00. (The former wearing value of $2,550.00 has been increased $150.00 to $2,700.00, by the cost of the lubricator; $2,700.00 less $510.00 in depreciation reserve, leaves a net wearing value of $2,190.00).

1924. The normal depreciation has been increased to $182.50. This is arrived at by dividing the new remaining value

$2,190.00 by the remaining useful life of 12 years. No additions, no renewals. There is accordingly at the end of the year $692.50 in the depreciation reserve, and a net remaining value of $2,007.50.

1925. Normal depreciation of $182.50. Other things being equal, there would accordingly be $875.00 in the depreciation reserve at the end of the year, and a net remaining value of $1,825.00, but on July 12 the old piston has been replaced by a new one costing $300.00. This $300.00 is charged against the accumulated depreciation, reducing that to $575.00, and increasing the remaining value by just that much to $2,125.00.

1926. At January 1, 1926, the asset has been in use five years. Its remaining useful life accordingly would be ten years, but the replaced piston, etc., it is assumed, prolongs the useful life two years, and the remaining useful life of the asset is correspondingly changed to twelve. This remaining useful life, twelve years, divided into the remaining value, $2,125.00, gives a new annual depreciation charge of $177.08. At the close of the year, the depreciation in reserve will amount to $752.08 and the remaining value $1,947.92.

1927. On the tenth of January the machine sold for $2,000.00. On the proper page of the journal an entry corresponding to the following will appear:—

Cash	$2,000.00	
Reserve for Depreciation	752.08	
Profit and Loss	97.92	
Buildings		$2,850.00

The sales price, $2,000.00, plus the accumulated depreciation, $752.08, $2,752.08, deducted from the total cost $2,850.00 indicates a loss of $97.92 on the transaction.

A notation can be written in red ink across the face of the property ledger page, or the items of cost, scrap and wearing value, depreciation reserve and remaining value closed out. At all events, the page will be taken out and filed in the rear of the ledger.

This hypothetical history is given in order to show how that property ledger operates and by what manner of contingencies it is affected.

Form 337

Plant Ledger Suggested by United States Chamber of Commerce *

Item Engine Manufacturer Brighton Engine Company Useful Life 15 Years
Dept. Trimming Mfrs. No. B-93217 as of 1/1/26 12 Years
Plant No. S. E.—T-1799 Purchased from Evans and Clark—Order No. 3906

Date		Description—Remarks	Ref.	Total Cost	Scrap Value	Wearing Value	Annual Depreciation	In Depre. Reserve	Remaining Value
1921 Jan.	1	50 H. P. Engine Invoice	V. 731	$2,500 00	$	$	$	$	$
		Freight	V. 729	15 00					
		Installation	V. 741	185 00	150 00	2,550 00	170 00	170 00	2,380 00
1922				2,700 00			170 00	340 00	2,210 00
1923							170 00	510 00	2,040 00
Oct.	9	Lubricator installed	V. 791	150 00		150 00			150 00
				2,850 00		2,700 00			2,190 00
1924							182 50	692 50	2,007 50
1925							182 50	875 00	1,825 00
July	12	Piston replaced	V. 907					300 00	300 00
								575 00	2,125 00
1926							177 08	752 08	1,947 92
1927 Jan.	10	Engine sold—$2,000.00, Loss $97.92							

*Size 8½x11.

Control of Plant Expenditure

45. Purpose

The purpose of a request and estimate procedure is to provide adequate control over expenditures made in connection with capital assets. When properly arranged, a request and estimate provides a detailed record of each expenditure, showing (1) nature of the equipment desired, (2) estimated yearly saving resulting, (3) account to be charged, (4) classification of the expenditure, and (5) name of the official who approves it.

The request and estimate serves as the basis from which purchase orders are originated.

46. Origin

The request and estimate originates in the office of a plant superintendent or of a manager of a branch office. A specific illustration follows:

> The sales department decides that advantages would accrue from the use of one-half pound tapered tin cans in marketing hash. A letter is sent to the plant superintendent, asking whether such cans can be manufactured at the plant. He takes the matter up with the foreman of the tin shop and with construction department. The manufacture of tapered cans would necessitate remodeling present equipment, but cost of remodeling would be offset by subsequent savings in cost to manufacture.
>
> A request and estimate is therefore made up in the plant superintendent's office to cover cost of remodeling equipment used to manufacture cans. This requires the insertion of location of plant, date, number of the request and estimate, estimated amount of the expenditure, what the expenditure is for and the reason therefor, when the work is to start, estimated cost (in figures), estimated time to finish, and estimated yearly saving. The form shown in Form 338, is filled out and attached to the request and estimate, shown in Form 339.
>
> The request and estimate is made up in triplicate. The original copy is signed by the foreman of the department affected and by the superintendent of the plant. The duplicate

(white) and the triplicate (yellow) are retained in the office of their origin. When the work is completed actual cost and actual time to finish are entered on the duplicate and triplicate. The duplicate is then sent to the controller's department where actual cost is compared with estimated cost. When actual cost is considered higher than estimated cost, the discrepancy is brought to the attention of the general superintendent for investigation. The triplicates are retained in the office of origin.

47. Approvals

After the original copy of the request and estimate is signed by the plant officials, it is sent to the office of the general superintendent. Here the information found on the request and estimate is entered in a register. This register is used for reference and to aid in controlling future approvals. If deemed necessary, the plant superintendent approves it in the space provided. However, all requests and estimates are thoroughly investigated before being approved. After being approved by the plant superintendent the request and estimate is sent for approval to the construction department, office manager, treasurer, controller, vice-president and president, in the order named. These officials base their approvals on the information found on the request and estimate, and in letters and papers attached. The treasurer takes care of fire insurance requirements regarding new equipment when the request and estimate goes through his office.

Before the request and estimate is approved by the controller the amount of the expenditure is entered against the budget for the plant concerned. It is then recorded in a register serving as a permanent record of request and estimates approved. The controller then approves the charges to the account designated on the request and estimate. The account to which the charge is to be made is determined by the person who checks the request and estimate against the budget. The above plan insures adequate investigation of all expenditures.

Form 338

Form Accompanying Request and Estimate

PLANT..... ..... 192...
Estimate of cost..... Estimate No. .....
..... Request and estimate No. .....
..... Estimated by .....
As per drawing No. ..... Checked by .....

Material and Description	Estimated Cost				Remarks
	Material	Labor	Total	Grand Total	

Form 339

Request and Estimate*

At.....City .....State
Date.....192... No. .....

We recommend an expenditure of	Advocated by signatures	
.....Dollars, $.....		
For financing chucks, seaming blocks, double seamer attachment and install. also equip single roll scoring machine to score ½ lb. tins.....	Manager	
Tapered tins ½ lb. hash.....		
Reason—The above equipment will save about $.....per M	Dept. head	
.....		
If this is a REPLACEMENT AND item replaced is not worn out or unfit for use, indicate below what it replaces, why same is being discarded, giving its value (estimate if necessary.).....	Supt.	of Plant
	Foreman	of Dept. (tin shop)
.....		
To be started at once.....		
VALUES, BOOK $ ACTUAL $		

Cost	Time to finish	saving yearly	Approved as to charges to Accounts
		Gross estimated	
Estimated $	Estimated	Less Int. Dept. Etc.	5 Office Mgr.
		Estimated $	
Actual $	Actual	Not Estimated	
		Details Attached	
Chargeable to		Actual $	
Classification			
Investment $	Gov't. and Municipal	$	Accounting Department
$	Insurance	$	
Repairs $	Power and Refrigeration	$	
Fixtures $	Maintenance	$	
---------- $	Installation or replacement to		
---------- ----	facilitate handling, reduce	$	
	costs, or improve quality.	$	
Total $	Total	$	

	DIRECTORS	3 Superintendents Chicago	4 Construction department	6 Insurance department
Chicago Approvals	9 Pres. 8 V. Pres.			Treasurer

* Issued in triplicate.

48. Uses

When all approving signatures have been entered on the request and estimate it is returned to the general superintendent's office. This office then sends a notification of approval to the plant superintendent, purchasing department, construction department, and voucher department.

The voucher department keeps the notification of approval on file, using it to verify amounts and accounts to be charged when the invoice for the goods comes through.

The construction department uses the notification of approval to keep posted on the various construction and remodeling work going on at different plants.

The purchasing department keeps a record of all approved request and estimates. This record is made from the notifications of approval and is used as authority to purchase equipment and goods for the improvements and repairs called for by the request and estimates.

The plant superintendent uses the notification of approval as authority to make out a purchase order, shown in Form 340, for equipment needed for the improvement called for by the request and estimate.

When the general superintendent's office has sent out the notifications of approval, it sends the approved request and estimate to the controller's department, where it is filed.

If the request and estimate calls for an improvement necessitating a capital investment, the amount of the investment is shown on the building and equipment statement sent to the controller's department each month by each plant.

FORM 340

PURCHASE ORDER *

Form C 480
3 to a set
DEPT. No. 6

Send original and duplicate to receiving department
PURCHASE ORDER No.

On hand	Present stock will last

Please purchase for.....Dept.....Date.....192..

	Wght. or No.	Price	Discount	Amount

F.O.B.

Date wanted

Ordered by

Bought of

Approved for Purchase by

* Issued in triplicate—white, pink, and green.

If the request and estimate calls for a repair, the cost of the repair is included in a monthly repair statement, sent by the plant superintendent to the general superintendent's office.

When the repair or improvement is completed the duplicate (white) copy is sent from the plant office to the controller's department with the actual expenditure inserted in the space provided. The controller's office compares this with estimated cost, entering actual cost in the request and estimate register. The duplicate copy is then attached to the original, the two copies being filed.

49. Procedure of Large Steel Manufacturer

The above illustration emphasizes the administrative procedure in connection with expenditures on plant. Following are shown forms used by a large steel manufacturer, filled in with a detailed illustration.

FORM 341

Form No.	Name
A 514 S	Request for special appropriation
A 515 S	Estimated cost on special appropriation
A 511 S	Job order form
(This form serves two purposes; namely, the plant authority for performing work costing less than $200.00, in which case it takes the place of Special Appropriation Form; and in cases when used with the Special Appropriation Form, it serves as a summary of the total charges each month to the Special Appropriation.	
A 533	Report of charges on completed appropriation

FORM 342

Pittsburgh works

Request for Special Appropriation *February 19, 1923* S. A. No. P-241

MR. ....., President

An appropriation of $..... is requested to cover expenditures for purchase and installation of one 150 K.W. capacity motor generator set. A preliminary estimate of which is as follows:

Motor generator set per quotation G. E. Co.....	$4,532.00
Freight	100.00

Installation	800.00
10% contingencies	543.20
	$5,975.20

Reason for request—(Describe the reason for the request, the estimated savings in costs or increase in production which will result, etc.)

At present we are purchasing power for a motor driven air compressor and for A. C. Motor driving sand mills.

Power for overhead cranes and small motors is supplied by an Erie high speed engine installed in 1908. Steam for this unit is supplied by two 150 H.P. fire tube boilers consuming approximately 300 tons of coal per month.

The approximate present cost of generating D. C. power is as follows:

Coal 300 tons at $4.00	$1,200.00
Firemen and labor handling coal	450.00
Boiler room repairs and supplies	150.00
	$1,800.00

Cost of generating with M.G. set:

Purchased power	$ 900.00
50 tons coal at $4.00 for heating	200.00
	$1,100.00

Aside from actual saving, this arrangement will protect against any interruption, due to engine or boiler failures and will give complete reserve equipment in both electric power and compressor air.

(If more space is required continue on back hereof)

Request made by.....Account to be charged.....
Works manager

Recommended by.....
Chief engineer Controller

Authorized by ..... Approved by board of directors
Fourth vice-president

FORM 343

S. A. No. P-241 Pittsburgh works

ESTIMATE OF COST ON SPECIAL APPROPRIATION

Issued February 19, 1929

Covering:

Motor generator set 150 K.W. Capacity complete with two switch board panels.

Details	Quantity	Price	Amount Labor	Amount Material	Amount Total
Motor generator set per G. E. Co. quotation				4,532 00	4,532 00
Freight on same				100 00	100 00
Foundation and concrete floor			75 00	125 00	200 00
Elec. wire, conduit to M. G. Set				200 00	200 00
Changing old switchboard			100 00	200 00	300 00
Labor erecting			100 00		100 00
Contingencies					543 20
Total					5,975 20

Signed

FORM 344

Pittsburgh works

JOB ORDER

Date issued ..... 192... Serial No. S/A P-241

Shipping report (31) No. ..... Date..... Account to charge.....

Covering the Following Repairs to Equipment Unit No. .....

Capital

$5,975.20

Summary of cost

192....	Direct Charges									
	Labor		Material		Stores		Other Charges		Total	
January	$		$		$		$		$	
February										
March 1923	54	96	4	73	23	75			83	44
April	78	77	30	65	38	65	4.719	94	4,868	01
May	8	04	23	83	4	81	102	69	139	37
June							998	26	998	26
July								75		75
August										
September										
October										
November										
December										
TOTAL									6,088	33

Date completed.....191..

Remarks—(Use back of form if necessary)

	Estimated Cost			
	Amount		comparison red - under black - over	
Labor				
Materials				
Stores				
Other Charges				
Total			113	13

FORM 345

Pittsburgh works

Report of charges on completed special appropriation

Completed July, 1923 S. A. No. 241

					Details		Total	
Purchase and Install. one 150 K. W. Mg. Set								
Appropriated							5,975	20
Expenditures								
Labor:					141	77		
Common labor				39.14				
Brickmason				20.24				
Repairment				26.91				
Carpenters				55.48				
Materials & Stores:					126	42		
71 Concrete materials, 80900 lbs.				59.21				
90 Stores				37.97				
93 Lumber 520 ft.				29.24				
Other Charges:					5,820	14		
Invoice	*Date*	*Supplier*	*Descript.*	*Amount*				
717	4–18	Union Elec. Co.	busing	4.60				
656	"	"	conduit	14.93				
738	4–24	Central Elec.	covers	.96				
812)			switchboard)					
835)		General Elec. Co	generator)					
861)			accessories)	4,532.00				
812)		Freight on above		87.58				
835		Freight on rheostat		2.73				
	4–30	Union Elec. Co.	conduit	60.15				
870	"	McCullough Elec. Co.	"	8.66				
W.A.Voucher								
No. 436		Express on parts		8.33				
919	5–8	Union Elec. Co.	clamps	.40				
896	5–17	Houston Bros.	cement	20.32				
983	"	Std. Supp. & Equip.	cap screws	.92				
951	"	Union Elec. Co.	wire & clamps	47.18				
955	5–8	Pgh. G. & S. Co.	bolt shields	1.60				
944	5–4	Freight on transformer		3.43				
965	5–8	" " switchboard		6.05				

Correct: ..... Approved: ..... Approved: .....

Works Auditor Maintenance Engineer Works Manager

FORM 346

Pittsburgh works

Report of charges on completed special appropriation

Completed July, 1923 S. A. 241

				Details	Total
Purchase and Install. one K. W. Mg. Set					5,975 20
Other Charges (cont'd.)					
Invoice	*Date*	*Supplier*	*Descript.*	*Amount*	
956	5–25	Houston Bros.	cement	16.25	
W.A.Voucher No. 437		express on meter		6.54	
1229		Freight on transformer		.98	
1220	6–14	General Elec. Co.	transformer	51.60	
1391	6–30	Braunlich-Roessle	wire gener.	945.68	
970	5–8	Doubleday Hill Co.	insulators	15.48	
Credit on wiring generator Matl. ret'd				16.23	
		Total expended			6,088 33
		Over expended			113 13
This over expenditure is due to various differences between actual cost and our estimate					

Correct: ..... Approved: ..... Approved: .....

Works Auditor Maintenance Engineer Works Manager

XXVI

STOCK TRANSFERS

1. How Stock Ownership Is Transferred

When the owner of stock sells it he fills out the form on the reverse side of his stock certificate and hands it to the buyer or to the buyer's agent. The latter sends it to the company or the company's transfer agent who makes out a new certificate in the name of the new owner and, after having it signed by the proper officials, sends it to the new owner. In case the owner of stock sells only a part of his holdings the company or the company's transfer agent issues two certificates, one to the new stockholder for the amount of stock he has purchased and one to the old stockholder for the amount of stock he retains. In either case the original certificate is canceled.

2. Stock Exchange Regulations

If a company wishes to list its stock on some stock exchange it must conform to the regulations of the exchange relative to stock transfers. These are intended to prevent fraud and over-issue of stocks. Thus a company listing its stock on the New York Stock Exchange must maintain a transfer agent and a registrar in the Borough of Manhattan, and both are subject to the approval of the Exchange's Committee on Stock List. The transfer agent must be in or near the Wall Street district to promote the quick transfer of stock. For the same reason the registrar must be in that vicinity. He must comply with the exchange's regulations. His duty is to see that no certificates are improperly issued, that old certificates are properly canceled, and that stock is not over-issued. His certificate must appear on every cer-

tificate issued. The same institution may not act as both transfer agent and registrar. A company cannot act as its own registrar. It may transfer its stock at its own office subject to the Exchange's regulations, to wit:

> Where a stock is transferred at the company's office, the transfer agent or transfer clerk shall be appointed by special authority of the board of directors to countersign certificates in said capacity, and shall be other than an officer who is authorized to sign certificates of stock.[1]

Relative to transfers of stock in other cities the regulations of the Committee on Stock List are as follows:

> The entire amount of the capital stock of a corporation listed upon the Stock Exchange must be directly transferable at the transfer office of the corporation in the Borough of Manhattan, City of New York. When a corporation makes transfers of its shares in other cities, certificates shall be interchangeably transferable, and *identical in color and form,* except as to names of transfer agent and registrar; and the combined amounts of stocks registered in all cities shall not exceed the amount authorized to be listed.

The form of assignment required by the exchange may be found by reference to the regulations of the Committee on Stock List. The transfer required by this form of assignment is unconditional and the power of attorney, once given, is irrevocable.

3. Negotiability of Stock Certificates

Stock certificates are not negotiable under the common law, but in some states this disability has been removed by statutory enactment. Some states, notably New York, Pennsylvania, Ohio, Illinois, Connecticut, Massachusetts, Wisconsin, Tennessee, Louisiana, New Jersey, Rhode Island and Maryland, have passed the Uniform Stock Transfer Act, or a modified form thereof, which makes certificates of

[1] *Comm. on Stock List, Requirements for Original Listing,* July 1, 1925, page 6. The full regulations of this committee are found elsewhere in this volume.

stock negotiable instruments; but this provision applies only to such stock as is issued after the passage of this law.

Form 347

Uniform Stock Transfer Act

The Uniform Stock Transfer Act has been enacted in eighteen states. The text of the New York law is reproduced below. It is found in Chapter 41 of the New York Consolidated Laws.

Sec. 162. *How title to certificates and shares may be transferred.*—Title to a certificate and to the shares represented thereby can be transferred only,

(*a*) By delivery of the certificates indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(*b*) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

Sec. 163. *Powers of those lacking full legal capacity and of fiduciaries not enlarged.*—Nothing in this article shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.

Sec. 164. *Corporation not forbidden to treat registered holder as owner.*—Nothing in this article shall be construed as forbidding a corporation,

(*a*) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(*b*) To hold liable for calls and assignments a person registered on its books as the owner of shares.

Sec. 165. *Title derived from certificate extinguishes title*

derived from a separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

Sec. 166. *Who may deliver a certificate.*—The delivery of a certificate to transfer title in accordance with the provisions of section one hundred and sixty-two is effectual, except as provided in section one hundred and sixty-eight, though made by one having no right to possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

Sec. 167. *Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.*—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section one hundred and sixty-eight, though the indorser or transferor,

(*a*) Was induced by fraud, duress or mistake to make the indorsement or delivery, or

(*b*) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(*c*) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(*d*) Has received no consideration.

Sec. 168. *Rescission of transfer.*—If the indorsement or delivery of a certificate,

(*a*) Was procured by fraud or duress, or

(*b*) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(*c*) Without authority from the owner, or

(*d*) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

Sec. 169. *Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.*—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

Sec. 170. *Delivery of unindorsed certificate imposes obligation to indorse.*—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Sec. 171. *Ineffectual attempt to transfer amounts to a promise to transfer.*—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

Sec. 172. *Warranties on sale of certificate.*—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate unless a contrary intention appears, warrants—

(*a*) That the certificate is genuine.

(*b*) That he has a legal right to transfer it, and

(*c*) That he has no knowledge of any fact which would impair the validity of the assignor upon such warranty shall not exceed the amount of the claim.

Sec. 173. *No warranty implied from accepting payment of a debt.*—A mortgagee, pledgee or other holder for security of a

certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

Sec. 174. *No attachment or levy upon shares unless certificate surrendered or transfer enjoined.*—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

Sec. 175. *Creditor's remedies to reach certificate.*—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Sec. 176. *There shall be no lien or restriction unless indicated on certificate.*—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

Sec. 177. *Alteration of certificate does not divest title to shares.*—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

Sec. 178. *Lost or destroyed certificate.*—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation of any person injured by the

issue of a new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

Sec. 179. *Rule for cases not provided for by this act.*—In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern.

Sec. 180. *Interpretation shall give effect to purpose of uniformity.*—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 181. *Definition of indorsement.*—A certificate is indorsed when an assignment or a power of attorney to sell, assign or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

Sec. 182. *Definition of person appearing to be the owner of certificate.*—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

Sec. 183. *Other definitions.*—1. In this article, unless the context or subject-matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

'Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

'State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

2. A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

Article does not apply to existing certificates. The provisions of this article apply only to certificates issued after the taking effect of this article.

Sec. 185. Inconsistent legislation repealed. All acts or parts of acts inconsistent with this article are hereby repealed.

4. Lost and Stolen Certificates

Certificates of stock lost or stolen are not negotiable unless endorsed in blank by the owner. A forgery of the owner's name will not transfer title. In case of a certificate endorsed in blank and lost or stolen the owner may claim same unless it has been transferred to a third party who purchased it in good faith for value, or unless the owner is guilty of too great delay in claiming it, or has waived his right to claim it. Under the common law certificates of stock are not negotiable, hence the rule above stated as to a holder in good faith does not hold where the Uniform Stock Transfer Act or its equivalent has not been enacted.

Where it is necessary to send stock certificates by mail endorsed in blank the danger of loss may be largely overcome by mailing a detached assignment form under a separate cover and by a different mail.

Should the owner insert the broker's name in the blank space conferring the power of attorney, to transfer the title upon selling the stock the broker must attach a substitute power of attorney, signed either in blank or with the purchaser's name as attorney. Such a power of substitution is shown in Form 348.

FORM 348

POWER OF SUBSTITUTION

I (or we) do hereby constitute and appoint.....
.....my (or our) substitute to transfer the within named stock under the foregoing power of attorney, with like power of substitution.

.....

Dated....., 19...
.....
.....

5. Form of Endorsement

By an endorsement in blank is meant writing the name of the owner in the proper space, but leaving the space for the name of the transferee and the space for the power of attorney blank. This endorsed certificate of stock may be passed from hand to hand the same as currency. Any holder thereof may have the stock transferred to his name on the company's records by signing in the blank space at the top of the assignment form but leaving the power of attorney blank open. When the certificate is handed to the transfer agent he inserts his own name as attorney and makes the transfer.

When the owner endorses the assignment form his name "must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever," as is provided for in the form prescribed by the New York Stock Exchange and otherwise generally required.

In case of unmarried women the name on the certificate

should be preceded by the word "Miss." The same prefix must be used in the endorsement.

If the name is incorrectly spelled or otherwise defectively written on the face of the certificate, and the owner when endorsing it writes his name exactly as on the face of the certificate, then follows it with his name correctly written, the certificate is made non-deliverable. To be made deliverable it must be returned to the issuing company which will indicate thereon the correct name, after which the transfer agent countersigns the correction.

Any person may act as witness to the signature, but the New York Stock Exchange requires that a married woman's assignment of a certificate of stock must be acknowledged jointly by husband and wife before a notary. The assignment of a widow should be acknowledged before a notary, also that of an unmarried woman if the name is not preceded by "Miss."

It is customary for members of the New York Stock Exchange to guarantee the genuiness of certificates assigned by their clients for sale. This is done by having a representative sign his name under that of the witness. Should the signature prove a forgery the member would be held responsible.

Where stock is hypothecated to secure a loan it should ordinarily be endorsed in blank. The danger which the bank would incur in holding certificates endorsed in blank may be avoided by having the assignment form detached. Such assignment should adequately describe the certificate to which it applies.

If an individual is incapable of contracting, the transfer of his stock must be performed by an attorney in fact who must supply evidence of his authority to act.

An assignment of stock by a corporation must be by a duly appointed officer acting by authority conferred by the by-laws or by resolution of the board of directors, and must be acknowledged before a notary and impressed with the corporate seal. The transfer agent will require such officer

to submit adequate proof of his authority to act, i.e., a copy of the by-laws or of the empowering resolution of the board of directors, together with a statement from the secretary of the company to the effect that the person signing is the one properly appointed and that his power to sign is in force at the time in question.

Transfers made by fiduciaries—trustees, executors and administrators—must be in accordance with the requirements of state laws. Since such fiduciaries hold appointment from some court they must, in making an assignment of stock, attach thereto a certified copy of their appointment. In case of stocks standing in the name of deceased persons the transfer agent will demand a certified copy of the will, a certificate of its probate and such documents as the state laws may require.

6. New York Stock Transfer Tax Law

The provisions of the New York Stock Transfer Tax Law are of general interest because the bulk of all sales of stock are made on the New York Stock Exchange. Sections 270, 271, 271a, and 272 are reproduced below (Form 349), also the rules governing collection of the tax adopted by the New York Department of Taxation and Finance (Form 350). Copies of the complete law may be secured by application to the Department of Taxation and Finance, at Albany, N. Y., the fiscal agent for the sale of stock transfer tax stamps is the County Trust Company of New York, 8th Ave., at 15th St., New York City. Stamps are sold in the following denominations: 2c, 4c, 10c, 20c, 50c, $1.00, $2.00, $10.00, $20.00 and $100.00.

FORM 349

SECTIONS 270, 271, 271*a*, AND 272 OF N. Y. STOCK TRANSFER TAX LAW

Sec. 270. *Amount of Tax.*—There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, on

all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock, or certificates of rights to stock, or certificates of deposit representing certificates taxable under this article, in any domestic or foreign association, company or corporation, or certificates of interest in business conducted by a trustee or trustees, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company, corporation or trustee, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock, or other certificates taxable hereunder, or merely with the possession or use thereof for any purpose, or to secure the future payment of money, or the future transfer of any such stock, or certificates, on each hundred dollars of face value or fraction thereof, two cents, except in cases where the shares or certificates are issued without designated monetary value, in which cases the tax shall be at the rate of two cents for each and every share. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure, affix and cancel the stamps and pay the tax provided by this article. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon such certificates so deposited, nor upon mere loans of stock or certificates, or the return thereof, nor in respect to shares or certificates of stock, or certificates of rights to stock, or certificates of deposit representing certificates of the character taxed by this article, in any domestic association, company or corporation, even though a record of the transfer is made in the stock book kept in compliance with section ten of the stock corporation law, if neither the sale, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state and no act necessary to effect the transfer is done in this state. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only on the books of the association, company, corporation or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation or trustee the requisite stamps, and of such association, company, corporation or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer

of a certificate, the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed and canceled. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no more than one such bill or memorandum of sale made by the seller on any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in the book of account required to be kept by section two hundred and seventy-six of this chapter; and no further tax is hereby imposed upon the delivery of the certificate, or upon the actual issue of a new certificate when the original certificate is accompanied by the duly stamped memorandum of sale as herein provided. (*Thus amended by L.* 1922, *chapter* 354, *in effect May* 1, 1922, *and chapter* 403, *L.* 1927.)

Sec. 271. *Stamps, How Prepared and Sold.*—Adhesive stamps for the purpose of paying the state tax provided for by this article shall be prepared by the department of taxation and finance, in such form, and of such denominations and in such quantities as it may from time to time prescribe, and it shall make provision for the sale of such stamps by its duly authorized agent or agents in such places and at such times as in its judgment may be necessary.

The department of taxation and finance may from time to time and as often as it deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. In order to effect such a change and to discontinue the use of stamps of a former design the department of taxation and finance shall publish or cause to be published once in each week for each of three months immediately preceding the time for taking effect of such change, in one or more daily newspapers published in each of the first and second class cities of the state, a notice to the effect that after a certain day, which shall be at least three months after the first publication of said notice, none other than the new issue or design of stamps shall be accepted or made use of in payment of the tax provided for by this article. After such date it shall be unlawful for any person to make use of any other than the new issue or design of

stamps in payment of such tax. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

Any person lawfully in possession of unused stamps of an old or superseded issue or design may, within ninety days from the time when such change becomes effective as aforesaid, surrender the same to the department of taxation and finance together with a sworn statement setting forth the name and address of the owner and party surrendering said stamps, how, when and from whom the same were acquired and such other pertinent information as the department of taxation and finance may require; whereupon the department of taxation and finance shall redeem such unused and surrendered stamps by exchanging therefor stamps of a like denomination of the new issue or design. Failure or refusal of the department of taxation and finance to redeem the same by such an exchange may be enforced by mandamus. (*Thus amended by L.* 1922, *chapter* 354, *in effect May* 1, 1922.)

Sec. 271-*a*. *Sale of Stamps.*—No person, firm, company, association or corporation other than a corporation organized under the banking law of this state or under the national bank act of the United States, or a duly authorized agent of the department of taxation and finance, shall sell or expose for sale, traffic in, trade, barter or exchange any stamp issued pursuant to this article, without first obtaining from the department of taxation and finance its written consent to sell, traffic in, trade, barter or exchange such stamps, except that in connection with a sale of or agreement to sell stock a broker or agent of the principal making such sale or agreement to sell may supply and affix the stamp or stamps required by this article. No persons shall sell or expose for sale any stamp so purchased or acquired for a sum less than the face value thereof without the written consent of the department of taxation and finance. Any person lawfully in possession of unused stamps of the issue then in effect may request the department of taxation and finance for its consent to redeem the same. He shall present to the department of taxation and finance, if so required, a sworn statement setting forth the name and address of the owner and the party desiring to redeem said stamps, how, when and from whom the same were acquired and such other pertinent and relevant information as the department of taxation and finance may require. Thereupon the department of taxation and finance may authorize the redemption of such stamps through its fiscal agent appointed for the sale of stock transfer stamps. Upon the failure or refusal of the department of taxation and finance to give such authority the same may be enforced by mandamus. Any person violating any of the provisions of this

section shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court. (*Thus amended by L.* 1922, *chapter* 354, *in effect May* 1, 1922.)

Sec. 272. *Penalty for Failure to Pay Tax.*—Any person or persons liable to pay the tax by this article imposed, and any one who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer or delivery of shares or certificates taxable under this article without paying the tax by this article imposed, and any person who shall in pursuance of any sale, transfer or agreement, deliver any certificate or evidence of the sale or transfer of or agreement to sell any such certificate, or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees, and any association, company, corporation or business conducted by a trustee or trustees, whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books, without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months or by both such fine and imprisonment, in the discretion of the court. (*Thus amended by L.* 1922, *chapter* 354, *in effect May* 1, 1922.)

Form 350

Rules Governing the Collection of the Tax on Transfers of Stock and Other Certificates under New York Act

For the information of the public the Department of Taxation and Finance issues the following brief statement of the more general rules and regulations governing the imposition and collection of stock transfer taxes, prepared pursuant to the rulings made by the Attorney-General.

1. The application and scope of the Stock Transfer Tax Law has been considerably broadened by the amendments thereto, effected by chapter 352 of the Laws of 1911, chapter 292 of the Laws of 1912, chapter 779 of the Laws of 1913, chapter 206 of the Laws of 1914, chapter 552 of the Laws of 1916, chapter 354 of

the Laws of 1922, and chapter 403 of the Laws of 1927, with the result that the rulings heretofore made asserting exemption are not now as a rule controlling.

2. A tax is imposed upon all sales or agreements to sell and upon all deliveries or transfers of shares or certificates of stock; or certificates of rights to stock; or certificates of deposit, which represent certificates taxable under section 270, deposited under a reorganization or similar agreement; or voting trust certificates, or other trust certificates; or common law trust certificates; of any and all associations, companies, corporations and business conducted by trustees, whether domestic or foreign, when any part of the transaction necessary to complete it takes place within this state, with the exception tha the mere recording on a book of record of the information required under section 10 of the Stock Corporation Law, does not of itself require the payment of a tax.

3. The amount of the tax is two cents on each hundred dollars of face (par) value or fraction thereof, except where shares or certificates are issued without designated monetary value, in which case the tax is two cents for each and every share. For example: a certificate for one share of $100 par value stock requires a two cent stamp when sold or transferred, and a twenty cent stamp for transfer of a ten share certificate. A certificate for one share of $10 par value stock requires a two cent stamp when sold or transferred as this is the minimum amount of tax, but a certificate for ten shares of the same stock, par value $10, requires but two cents as the total par or face value on the certificate is $100. Stock issued without face or par value is taxed two cents per share upon the sale or transfer.

4. It is the duty of the person making or effectuating the sale or transfer to pay the required tax by procuring, affixing and canceling the stamps, except that where a sale or transfer is shown only by the books of the corporation or trustee, the person making the sale must secure, and the corporation or trustee affix and cancel the stamps to its books.

5. This tax should not be affixed on stock being originally issued, or, as it is sometimes called, new stock. New York State has no original issue tax. The stock transfer tax only accrues subsequent to the original issue, when a sale or transfer, or an agreement to transfer or sell, takes place.

6. It is not necessary to render it taxable that the transaction involve a sale. By the statute, as amended, a tax is imposed upon all sales or transfers of shares or certificates whether operating to convey the beneficial interest in or merely the legal title to said stock or other certificate taxable hereunder, or possession or use

thereof for any purpose. Except, as provided in section 270, no tax is imposed upon an agreement evidencing the deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold. But should the borrower fail in his obligation a tax accrues immediately as the security then comes into the possession of the loanor.

7. The transfer into and out of a voting trust, or other trust, is taxable as is also the transfer of voting trust or other trust certificates.

8. The mere surrender of a certificate for reissue in smaller denominations to the same name, or the surrender of a number of certificates for reissue in a single certificate to the same name is not taxable; but if reissued in part to the original owner and in part to another name it is taxable to the extent of the transfer to the new name.

9. The surrender of a certificate in the name of a deceased person for issuance in the name of his executor or administrator is not taxable; but all transfers made by the latter, whether to trustees, to legatees, to the estate, or to other persons, are taxable.

10. The law applies to the certificates of foreign as well as domestic corporations and trustees, and to residents and non-residents alike.

11. While the law has no extra territorial operation nevertheless, where it appears that the transfer of the certificate on the corporate stock certificate books within this state is essential to render the transfer effectual, it subjects it to a tax although in all other respects made without the state.

12. Likewise if the sale, agreement to sell, assignment, or transfer takes place within this state it is subject to the tax, although the transfer on the books is made without this state.

13. Where the sale or transfer is effected by the delivery or transfer of a certificate, the stamp must be placed upon the surrendered certificate. In case of an agreement to sell, or where the sale is effected by the delivery of the certificate assigned in blank, there must be made and delivered by the seller to the buyer, a bill or memorandum of such sale to which the stamps shall be affixed and canceled. This bill or memorandum with stamp attached must be affixed to the certificate, or property identified as provided by section 276, when presented for transfer.

A strict compliance with these requirements will be insisted upon.

14. Every such bill or memorandum of sale, agreement to sell or sales ticket must show:

(*a*) The date of the transaction which it evidences.

(*b*) The name of the seller.

(*c*) The stock to which it relates and the number of shares thereof; and all such memoranda of sale or sales tickets as are not used for the purpose of transfer must be kept by the broker for two years from their respective dates.

(*d*) And an identifying number as provided by section 270.

15. The acquiring, by a corporation or trustee, of its outstanding certificates either by purchase or otherwise is taxable on the transfer from the seller to the corporation or trustee. It is also taxable when again issued from the corporation or trustee to the new purchaser. However should such certificates be acquired for the purpose of legally reducing the capitalization, and the capital stock is legally reduced, no tax accrues when the certificates are turned in.

16. The surrender of preferred certificates for exchange into common certificates if issued in the same name is not taxable, nor is the exchange of common for preferred under the same conditions.

17. The transfer of certificates by gift or bequest is taxable.

18. The sale or agreement to sell certificates, made by a broker, directly or indirectly, for himself is subject to tax.

19. The transfer of a certificate from the owner's name into the broker's name and also from the broker's name into that of a purchaser is taxable.

20. The transfer from a firm name into a new firm name is taxable, except no tax accrues when the membership of the new firm is the same as that of the old.

21. The transfer from an individual's name to the same name as trustee is taxable, as is also the transfer from an individual's name as trustee to his same name as a person.

22. Every stamp used to denote the payment of the tax must be canceled by the user by writing or stamping thereon the initials of his name and the date upon which the stamp is attached or used. He must also cut or perforate the stamp in a substantial manner so that it cannot again be used. A failure to do so renders the party guilty of a misdemeanor.

23. Stamps erroneously attached to any document should not be removed by anyone other than a representative of the Department of Taxation and Finance. Section 280 of the law provides for a refund for stamps so attached, but provides that evidence satisfactory to the Department of Taxation and Finance be produced before the refund is allowed. When stamps are so attached, this department should be notified either at Albany or the New York city branch, a representative will be sent to investigate the claim

and if found to be a proper one will remove the stamps and assist in making out the necessary form for the refund claim.

24. Every broker is required to keep a just and true book of account in the form prescribed by the Department of Taxation and Finance (see Form 351, designated "account book to be kept by brokers") wherein shall be plainly and legibly recorded in separate columns:

(*a*) The date of making every sale, agreement to sell, delivery or transfer of shares or certificates taxable under the act.
(*b*) The name and the number of shares thereof.
(*c*) The face value thereof.
(*d*) The name of the seller or transferor.
(*e*) The name of the purchaser or transferee.
(*f*) The identifying number of the bill or memorandum of sale as provided by section 270.
(*g*) The value of the stamps affixed in payment of the tax.
(*h*) The date and the amount of each purchase of stock transfer stamps and name from whom purchased.

These books must be kept for a period of at least two years subsequent to the date of the last entry made therein and are subject to examination by the Department of Taxation and Finance representatives at all times between 10 A. M. and 3 P. M. (Saturdays, Sundays and legal holidays excepted.)

25. Every corporation or trustee or its or their transfer agent shall keep a just and true book of account in the form prescribed by the Department of Taxation and Finance (see Form 352, designated "account book to be kept by corporations, transfer agents and trustees"), wherein shall be plainly and legibly recorded in separate columns.

(*a*) The date of making every transfer of a certificate.
(*b*) The name and the number of shares thereof.
(*c*) The serial number of each surrendered certificate.
(*d*) The name of the party surrendering each certificate.
(*e*) The serial number of the certificate issued in exchange therefor.
(*f*) The number of shares represented by said certificate.
(*g*) The name of the party to whom said certificate was issued.
(*h*) The value of the stock transfer stamps affixed in payment of the tax on the transfer.

It shall also keep and retain the certificate book or books and all surrendered or canceled shares or certificates and memoranda relating to the sale or transfer for a period of not less than two years from date of the last entry made therein or the date of the last delivery thereof.

26. All such books and papers are subject to examination by the duly authorized representatives of the Department of Taxation and Finance at any time between the hours of 10 A. M. and 3 P. M. (Saturdays, Sundays and legal holidays excepted.)

27. It is imperative that these books, records and memoranda be kept and retained strictly in the form and manner provided by the statute and severe penalties are imposed for a failure so to do.

28. Every person, firm, company, association, or trustee engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates, taxable under the statute, or conducting or transacting a stock brokerage business, shall within ten days after July 1, 1913, or within ten days after engaging in such business, file with the Department of Taxation and Finance, either in Albany or New York City, a certificate setting forth the name under which such business is or is to be conducted or transacted and the true and real full names of the person or persons conducting or transacting the same, with the post-office address or addresses of said persons, or in the event of a change in the person conducting such business or change of address, like certificate setting forth the facts shall within ten days thereafter be filed. Such certificate shall be duly acknowledged. A failure to perform this duty is a misdemeanor.

29. Every stock association, company, corporation or trustee which shall maintain a principal office or place of business within the state or which shall keep or cause to be kept within the state of New York a place for the sale, transfer or delivery of certificates taxable under this act, shall within ten days after April 7, 1914, if such certificate shall not have been theretofore filed, or within ten days after engaging in or maintaining a place of such business, file with the Department of Taxation and Finance, either in Albany or New York City, a certificate setting forth the name of the company or trustee, the place of business, and when and where incorporated or organized, or in the event of a change in the persons or change of address like certificate setting forth the facts shall within ten days thereafter be filed. Such certificate shall be duly acknowledged by the president or secretary of the corporation, or duly authorized person of the trustee. A failure to perform this duty is a misdemeanor.

30. All persons liable for the payment of the tax, and all persons acting as agents or brokers for any such persons or for the corporation or trustee whose certificates are transferred, who in any manner assists in consummating a sale or transfer without payment of the required tax, are guilty of a misdemeanor.

31. Corporations, trustees, and persons acting as transfer agents

for corporations or trustees, are forbidden to transfer stock on the books of the corporation or trustee until the required tax has been paid. For a failure to perform this duty they are guilty of a misdemeanor.

32. Severe penalties, civil and criminal, are also provided by the act for the illegal sale or use of stamps, for the removal or re-use thereof, for the failure to properly cancel stamps which are attached in payment of the tax, for the failure to pay the tax imposed and for violation of any other requirements of the statute. Furthermore, the failure to pay the tax constitutes an absolute defense to an action to recover the purchase price of the stock.

DEPARTMENT OF TAXATION AND FINANCE,
DIVISION OF FINANCE,
FRANK S. MCCAFFREY,
Deputy Commissioner.

FORM 351

ACCOUNT BOOK TO BE KEPT BY BROKERS UNDER NEW YORK LAW

(Name of Firm or Individual Issuing This Record)

No. of Bill or Memo. of Sale	Date	Name of Stock	No. of Shares	Face Value	Name of Purchaser or Transferee	Face Value of Stamps	Purchase of Stamps		
							Date	Amt.	From Whom Purchased

FORM 352

ACCOUNT BOOK TO BE KEPT BY CORPORATIONS, TRANSFER AGENTS AND TRUSTEES UNDER NEW YORK LAW

(Name of Stock Recorded on This Sheet)

Date	Serial Number of Cancelled Certificate	Number of Shares	By Whom Surrendered	To Whom Issued	Serial Number of New Certificate	Number of Shares	Value of Stock Transfer Stamps Affixed

FORM 353

CERTIFICATE TO BE FILED WITH THE DEPARTMENT OF TAXATION AND FINANCE BY STOCK BROKERS, SECTION 275-a, TAX LAW

I hereby certify that the following named persons.....
.....
(Here set forth full names and addresses)
.....
.....
.....
.....
are engaged in business as stock brokers under the trade name or style of.....
at No.....in the city of
....., New York.
Dated....., 19....

.....

STATE OF NEW YORK } ss.
County of .....

On this.....day of....., 19....,
before me, the subscriber, personally came.....,
to me known to be the person named in and who executed the foregoing certificate and he duly acknowledges to me that he executed the same.

.....
Notary Public.

FORM 354

CERTIFICATE TO BE FILED WITH THE NEW YORK DEPARTMENT OF TAXATION AND FINANCE BY ASSOCIATIONS, TRUSTEES AND CORPORATIONS, SECTION 275-a, TAX LAW

I, ..., President of the / Secretary / Trustee

.....
(Name of association, corporation or trustee)

do hereby certify that the said association / corporation / trustee keeps a place for the sale, transfer or delivery of its stock, or certificates of interest, at

No. ....., in the city of ....., N. Y.
Incorporated ....., Laws of the State of .....

.....
President
Secretary
Trustee

STATE OF NEW YORK } ss.:
COUNTY OF .....

On this .....day of ....., 19...
before me, the subscriber, personally came .....
to me known and who being by me duly sworn did depose and say
a trustee trust
that he is the President of the .....corporation
Secretary association
above named and that he executed the foregoing on behalf of said
trustee
corporation pursuant to authority vested in him by a vote of the
association
association.
board of directors of said corporation.
trustee.

.....
Notary Public.

RECORD OF STOCK TRANSFERS

7. Stock Transfer Department

The work of recording transfers of stock varies from a simple procedure in the case of small or closely held corporations to a somewhat complicated procedure in the case of large corporations whose stocks are dealt in extensively on the stock exchanges. Many large corporations secure the services of a trust company for this work but others have developed their own procedure. Thus one large corporation operates a Stock Transfer Department in two divisions namely:

Stock Transfer Division under the treasurer's jurisdiction.
Accounting Division under the comptroller's jurisdiction.

The Stock Transfer Division handles all work in connec-

tion with the issuance, cancellation and transfer of certificates, countersigns dividend checks, and so forth. It reports to the Assistant Treasurer in New York City. The Accounting Division maintains all stockholders' records, prepares stockholders' lists, dividend checks, proxies and so forth and in conjunction with the Transfer Division, checks and approves transfers before new certificates are issued. This division reports to the Comptroller.

8. Procedure of Transfer Division

On receipt at the transfer window of certificates for transfer the Stock Transfer Division examines the face of the stock certificate to determine that it has not been raised or altered. Next the endorsement or signature to the assignment is examined to ascertain that it corresponds with the name as written on the face of the certificate in every particular without alteration or any change whatever. When the assignment is executed by the executor, administrator, trustee, guardian, attorney-in-fact, official acting for the corporation, society, and so forth, documentary evidence of the authority of said assignor must be submitted. It is furthermore required that the signature to the assignment be guaranteed by either a New York Stock Exchange firm, a New York bank, or an out-of-town bank having a New York correspondent. A file of specimen signatures is maintained. In New York State, stock transfer stamps to the value of two cents per share must be attached to the certificate or bill of sale attached thereto when presented for transfer and cancelled by dating not earlier than the date of assignment. Federal stock transfer stamps to the value of two cents per share must be attached and cancelled in the same manner as the New York stock transfer stamps. It is furthermore required that the full name (the first or middle name should be written in full) and the post office address of the transferee be written in the space provided in the assignment. In case the transferee is a woman the title "Miss" or "Mrs." is requisite. In the case of this particular Corporation there is

shown in the assignment, space for a power of attorney wherein the name of the person authorized by the Corporation to make the transfer may be shown. This should be left blank, but if filled in with another name such power must be released with a power of substitution. To the person surrendering a stock certificate for purposes of transfer is given

FORM 355

STUB AND RECEIPT FOR COMMON STOCK CERTIFICATE

7020
NO. DATE

Numbers of New Certificates Issued

Presented by

Total Shares

THE CORPORATION
STOCK TRANSFER OFFICE
NO. BROADWAY, NEW YORK, N. Y.

Date No. 7020

RECEIVED certificates of Common Stock representing

shares, issued in lieu of certificates of stock deposited for transfer.

Name of Firm

By

Address

STOCK DELIVERED ONLY ON SURRENDER OF THIS RECEIPT

FORM 356

STUB AND RECEIPT FOR PREFERRED STOCK CERTIFICATE

3519
NO. DATE

Numbers of New Certificates Issued

Presented by

Total Shares

THE CORPORATION
STOCK TRANSFER OFFICE
NO. BROADWAY, NEW YORK, N. Y.

Date No. 3519

RECEIVED certificates of Preferred Stock representing

shares, issued in lieu of certificates of stock deposited for transfer.

Name of Firm

By

Address

STOCK DELIVERED ONLY ON SURRENDER OF THIS RECEIPT

a window receipt for the number of shares surrendered after his name is ascertained. The stub of this receipt is pinned to the certificate upon which is written the name of the firm requesting the transfer. See Forms 355 and 356.

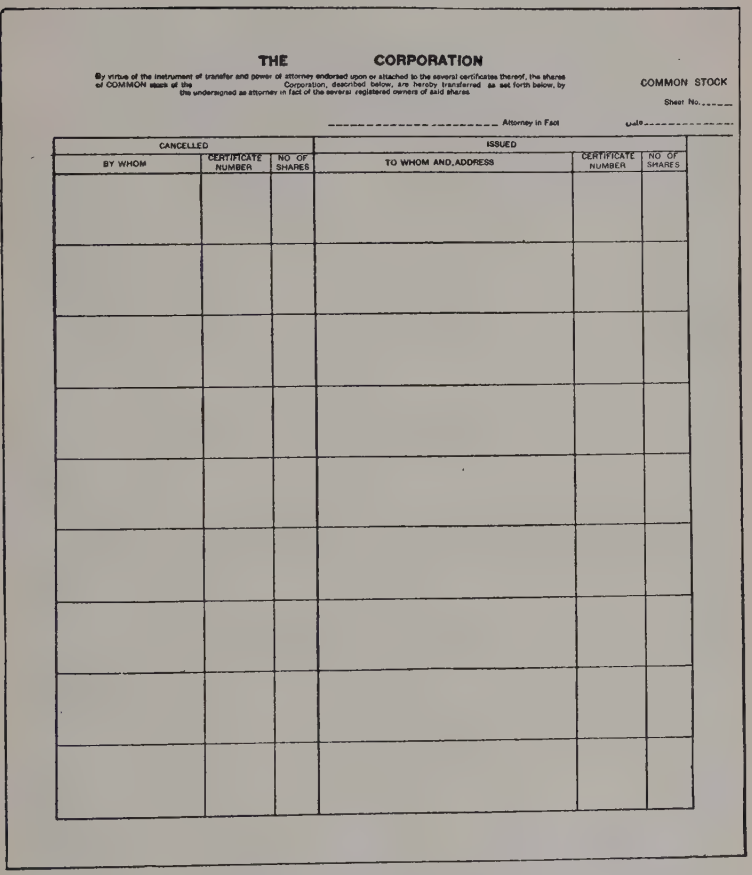
Stock certificates are issued to the transferee whose name appears in the space provided on the back of the surrendered certificate. In preparing these certificates a pin-point typewriter having a non-erasable ribbon is used for typing both the stockholder's name and the number of shares on the stock certificate. For certificates other than those for 100 shares the number of shares is entered in figures in the upper right-hand corner of the certificate and spelled out in the space under the stockholder's name. Certificate numbers of the newly issued certificates are entered on the stub of the receipt shown in Forms 355 and 356, for further identification as to the party to whom delivery is to be made.

A Transfer Sheet such as is shown in Form 357 is prepared in triplicate showing the transcript of each transfer. The debit (cancelled) side of the sheet is prepared from the face of the cancelled certificate and shows the stockholder's name, certificate number and number of shares. The credit (issued) side is also prepared from the cancelled certificate (reverse side) which shows transferee's name, address, and number of shares, the certificate numbers being obtained from the newly issued certificates which accompany the cancelled certificates. At the time the numbers of the new certificates are obtained a check is made by the typist by comparing with the data entered from the surrendered certificate. The newly issued certificates are then separated from the surrendered certificates.

New certificates are dated the day of issue and corporate seal is impressed. Where a certificate calls for less than 100 shares the number of shares is also shown by cuts or perforations in the margin provided for this purpose. Both cancelled and new certificates are then listed on the adding machine and then compared with each item on the Transfer Sheet to check the total for the date and to prevent over-issue.

Form 357

Transfer Sheet



THE CORPORATION

By virtue of the instrument of transfer and power of attorney endorsed upon or attached to the several certificates thereof, the shares of COMMON stock of the Corporation, described below, are hereby transferred as set forth below, by the undersigned as attorney in fact of the several registered owners of said shares.

COMMON STOCK

Sheet No. _____

_____ Attorney in Fact

Date _____

CANCELLED			ISSUED		
BY WHOM	CERTIFICATE NUMBER	NO. OF SHARES	TO WHOM AND ADDRESS	CERTIFICATE NUMBER	NO. OF SHARES

Cancelled and new certificates are proof read with the Transfer Sheet.

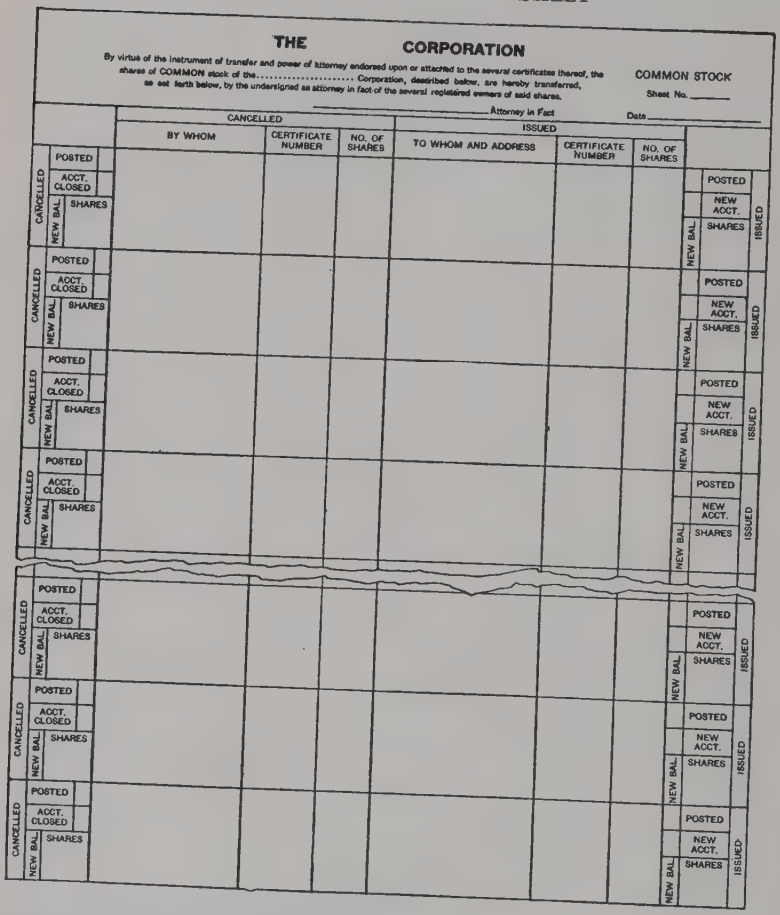
New certificates are countersigned by a transfer clerk.

Surrendered certificates are finally cancelled by perforating the signatures of corporate officers.

Cancelled and new certificates are delivered to the Guar-

Form 358

Duplicate of Transfer Sheet


THE CORPORATION

By virtue of the instrument of transfer and power of attorney endorsed upon or attached to the several certificates thereof, the shares of COMMON stock of the ..... Corporation, described below, are hereby transferred, as set forth below, by the undersigned as attorney in fact of the several registered owners of said shares.

COMMON STOCK

Sheet No. ____

Attorney in Fact

Date ____

CANCELLED

BY WHOM | CERTIFICATE NUMBER | NO. OF SHARES

ISSUED

TO WHOM AND ADDRESS | CERTIFICATE NUMBER | NO. OF SHARES

CANCELLED: POSTED; ACCT. CLOSED; NEW BAL. SHARES

ISSUED: POSTED; NEW ACCT.; NEW BAL. SHARES

anty Trust Company, Registrar, at 9:00 a. m. on the day following for cancellation and registration.

Upon return from the Registrar at about 11:30 a. m. the new certificates are pinned to the stubs of receipts, Forms 355 and 356.

A duplicate copy of the Transfer Sheet, Form 358, is sent

at once to the Accounting Division so that the surrendered certificates may be checked with the stockholder's record cards prior to delivery at about 1:30 p. m. A written memorandum is sent to the Transfer Division stating that the certificates listed on the debit side of the Transfer Sheet are in accordance with the stockholder's record cards.

Stock certificates are then delivered upon presentation of the original sheet, Form 357, duly signed by a representative of the firm receiving the certificates, at which time the delivery clerk compares the certificate numbers with the numbers already entered on the stubs of receipts, and the total of shares with the total shares surrendered.

Cancelled stock certificates resulting from each day's transfer are sorted into numerical order, fastened together

FORM 359

AUTHORIZED SIGNATURES

THE CORPORATION
STOCK TRANSFER OFFICE DATE_____

	SIGNATURES
MR.	WILL SIGN
MR.	
MR.	
MR.	
MR.	
MR.	
MR.	

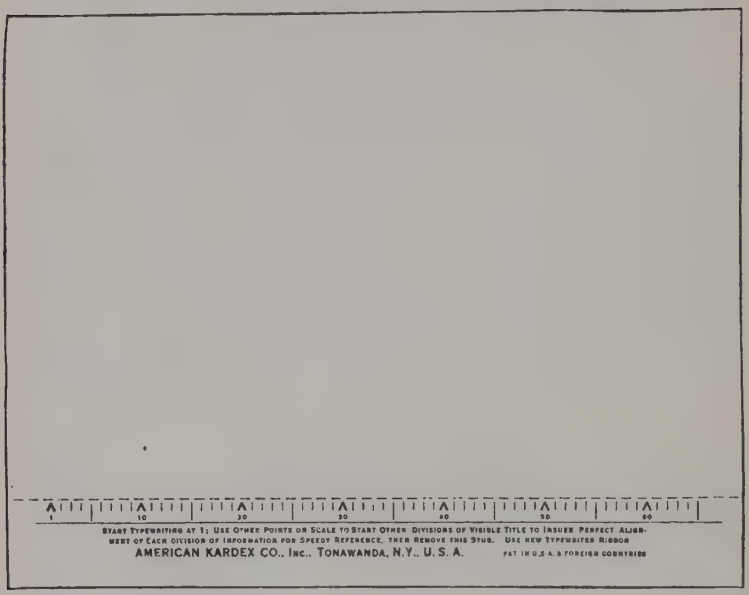
START TYPEWRITING AT 1; USE OTHER POINTS OR SCALE TO START OTHER DIVISIONS OF VISIBLE TITLE TO ENSURE PERFECT ALIGNMENT OF EACH DIVISION OF INFORMATION FOR SPEEDY REFERENCE: THEN REMOVE THIS STUB. USE NEW TYPEWRITER RIBBON

KARDEX-RAND CO., INC., TONAWANDA, N.Y., U.S.A. PAT. IN U.S.A. & FOREIGN COUNTRIES

200—31951

FORM 360

LISTING STOP ORDERS (BUFF USED FOR COMMON STOCK)



and filed in the order of the date of cancellation. Such cancelled check certificates are kept indefinitely.

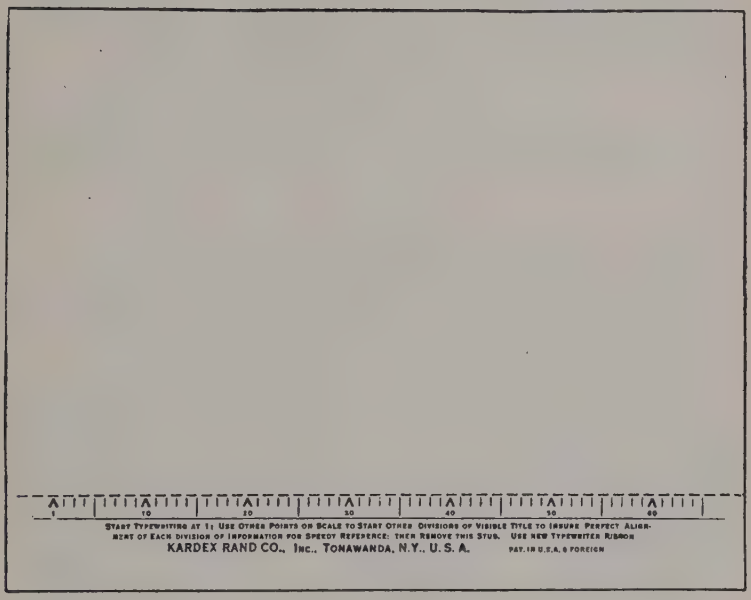
Window receipts for each class of stock are filed in numerical order of the stock certificate shown thereon. When dividend checks are returned by the bank they are sorted numerically, checked against the dividend list and filed. As to the distribution of the Transfer Sheet shown in Forms 357 and 358 the original is retained in the Transfer Office in New York; the duplicate shown in Form 358 perforated for division into coupons is used as a posting medium by the Accounting Division; the triplicate (not shown) goes to the principal office of the company.

A sinograph is used which permits writing ten signatures with one writing.

Form 359 is used to record the authorized signatures of

FORM 361

LISTING STOP ORDER (SALMON USED FOR PREFERRED STOCK)



stock exchange firms and banks whose guarantee of signature of stockholders on certificates presented for transfer, is accepted.

FORM 362

LETTER ACKNOWLEDGING RECEIPT OF CERTIFICATES

THE ..... CORPORATION
No. ..... BROADWAY
NEW YORK

IN REPLY REFER TO

We acknowledge receipt of your letter, enclosing stock certificates of The ..... Corporation aggregating shares of Preferred / Common Stock to be transferred in accordance with the instructions contained therein.

Please note that there is due $..... in payment of the Federal and New York State Transfer Taxes which we would thank you to remit.

Kindly forward the amount due, so that the transfer may have our prompt attention.

Yours very truly,

.....
Asst. Sec'y and Asst. Treas.

FORM 363

LETTER TO REPLACE CERTIFICATES

THE ..... CORPORATION
No. ..... BROADWAY
NEW YORK

IN REPLY REFER TO

We enclose herewith stock certificates of The ..... Corporation as listed below for ..... shares issued as requested ..... in lieu of certificates surrendered for transfer.

Certificate Nos. Issued in name of Class Shares

Please sign and return the attached copy of this letter.

Yours very truly,

.....
Asst. Sec'y and Asst. Treas.

We enclose herewith stock certificates of The..... Corporation as listed below for ..... shares issued as requested ..... in lieu of certificates surrendered for transfer.

Certificate Nos. Issued in name of Class Shares

Please sign and return the attached copy of this letter.

Yours very truly,

.....
Asst. Sec'y and Asst. Treas.

Received the above listed certificates and found to be correct.

Signature.....

Date.....

Forms 360 and 361, which vary simply in color, are used for listing the numbers of certificates for which "stop" orders have been received.

Form 362 is a letter acknowledging receipt of certificates by mail for transfer and requesting amount of Federal and State transfer taxes.

Form 363 is a letter issued to replace certificates received by mail for transfer. One copy of this letter is to be retained as a receipt.

9. Accounting for Stock Transfers

In the Accounting Division of the Stock Transfer Department a two-color scheme is employed to distinguish readily between the two classes of stock, in the transfer sheets, ledger cards, addressograph plate cards, and so forth. Buff is the color used for common and salmon for preferred.

The procedure followed from time of receipt of Transfer Sheet, Form 358, from the Transfer division, to the preparation of the dividend checks and stockholders' lists, follows.

On receipt of Transfer Sheet and before the coupons are attached, the following checking operations are performed:

(*a*) Check total debits and total credits by addition. These totals must agree.

(*b*) Check the name in which new certificate is to be issued against name from which it is to be transferred to determine whether the transfer is the result of a correction of name, or change of name on account of marriage, etc. This is necessary to insure that transfers as a result of a change of status or correction of name are not considered on our statistical records as a "closed" account.

(*c*) Check all transfers requiring a new EM (Employee's) certificate. New EM certificates replacing old EM certificates are permitted only in case of an error on the original certificate, or on distribution of an employee's estate to a beneficiary, after all legal requirements have been complied with.

Distribution of Coupons

After the Transfer Sheet has been checked, it is divided into the coupons provided for by perforation. "Debit" coupons represent

cancelled and "Credit" coupons new certificates, and constitute posting mediums. The procedure in connection with these coupons is explained below.

Posting "Debit" (Cancelled) Coupons

Coupons are sorted by "control" letters, Stockholder's Record Cards withdrawn from the files, and balances (before posting) tabulated. Debits are then posted by Burroughs bookkeeping machine, and "new" balances again tabulated. The difference between "old" and "new" balances should equal the total debits as shown on the transfer sheet, and total postings as shown on the bookkeeping machine. At the time of posting each account the coupons are marked (in the space provided) to indicate whether the account is "closed" (all shares transferred) or not. This record is required for statistical purposes. "Open" account cards are then returned to the files.

Closed Stockholder's Record Cards are then turned over to the addressograph operators, addressograph stencils removed and after being checked with the cards, the stencils are destroyed. Closed cards are filed alphabetically in separate drawers for preservation.

Posting "Credit" (New Certificate) Coupons

Credit coupons are sorted by "control" letters, and compared with the Stockholder's Record Card file to ascertain whether the new certificate constitutes a new stockholder or whether the stockholder already has an open account. Great care is taken in making this check to watch for similarity of names, as a great many stockholders are not consistent in their signatures, and accounts may be open on which the full name is used, whereas the present transfer shows initials only. In cases where an account is already open, the cards are withdrawn, "out" cards inserted in their places, and the balances tabulated. When this check is being made the coupons are marked in the space provided to indicate whether the account is "new" or "old." New coupons are turned over to the addressograph operators and plates prepared and Stockholder's Record Cards made. After the new cards and coupons have been compared, the new issues are posted to the cards and another tabulation of balances made. The difference between the totals drawn from "old balances" and "new balances," should agree with total credits on the transfer sheet, and total postings as shown on the bookkeeping machine.

Checking "New" Certificates for Holding in Other Class of Stock

Before "new" addressograph plates are filed, a list is run off which is compared with the addressograph plates for the other class of stock (common or preferred) for the purpose of "tabbing" plates for stockholders holding both classes of stock.

Method of Indicating Stockholders Having Both Classes of Stock and Other "Exceptions"

To insure that one stockholder holding both preferred and common stock shall not receive duplicate notices, reports, etc., "tabs" are used, which are attached to the addressograph plates to designate exceptions as follows:

Green Tab

This tab, in the 5th position on a "common" plate indicates that the stockholder also holds preferred stock.

Red Tab

This tab, in the 1st position of either a "preferred" or "common" addressograph plate indicates home address of stockholder who has also a "dividend mailing" address other than his home address. The plate showing mailing address immediately follows stockholder's plate showing "home address."

Yellow Tab

This tab, in the 3rd position of either a "preferred" or "common" plate indicates the name and address of a "dividend payee," or person other than the stockholder to whom dividends are to be mailed. This plate immediately follows the stockholder's plate in the files.

By "setting" the addressograph machine, plates "tabbed" in a certain position will not record. By this means dividend checks, etc., may be prepared with "dividend" name and address only, when such name or address is other than the one shown on the Stockholder's Record Card. Similarly, notices, stockholder's lists, etc., may be prepared showing name of the stockholder with home address, and eliminating duplications where the stockholder holds both classes of stock.

Preparation of Dividend Checks

Before dividend checks are run off on the addressograph machines, the plates are compared with the Stockholders' Record

Cards, and "money sections" on the plates inserted to represent amount of dividend payable. This operation is performed quarterly instead of daily, as it has been found to be more satisfactory and to save unnecessary work, to correct or insert the money sections and check all plates with the cards in one operation, than to attempt to keep the money sections up-to-date daily and possibly have several changes on one plate during the course of the quarterly period.

After this operation has been performed, dividend checks are run off (in strips of five) on the addressograph machine, taking care that the check numbers run in sequence with the alphabetical arrangement of the plates.

Countersigning Dividend Checks

After checks have been written, compared and balanced, they are delivered to the Transfer Office for countersignature. This operation is performed on a signograph, which permits the signing of ten checks in one operation. A facsimile signature of the Treasurer is printed on the check, and arrangements have been made whereby the countersigning may be performed by one or more individuals whose signatures are specially authorized for each set of dividend checks.

Checking and Listing Dividend Checks

Before dividend checks are listed on the adding machine, they are compared with the Stockholders' Record Cards. Since the addressograph plates have already been compared with the cards and all corrections made, this constitutes a double check to insure accuracy.

Dividend checks are then listed on an adding machine on form (No. 7) which permits the tabulating of checks by numbers under each "control" letter. When listing of one letter is complete, the total is balanced to the total of the Stockholder's Record Cards. The checks are then ready for insertion in envelopes.

Change of Address During Dividend Preparation Period

During the period that dividend checks are being prepared all requests to change address are laid aside until the checks have been written and totals balanced. After this has been completed,

checks for stockholders who have requested changes in address are withdrawn, envelopes prepared with the new address and checks inserted. The address on the check is not changed, and the addressograph plates are changed later in course of the regular routine.

Inserting Checks in Envelopes

To insure that checks are not lost or mislaid while being inserted in the window envelopes, they are put in packages containing a predetermined number, together with an equal number of envelopes and quarterly report (change of address) folders. If any envelopes are left over after all checks have been inserted the operation is checked to insure that only one check has been inserted in each envelope. The envelopes are then carefully scrutinized in order to insure that checks have been inserted properly and that the name and address is clearly visible through the window.

Other Functions

The Accounting Division is also responsible for the following:

(*a*) Preparation of envelopes for mailing quarterly reports to stockholders. The envelopes are addressed on the addressograph machines, the "tabs" preventing the addressing of more than one envelope for a stockholder holding both classes of stock, and also eliminating plates showing "dividend mailing addresses."

(*b*) Preparation of stockholders' lists which are required for the annual stockholders' meeting. Separate lists are prepared for the different classes of stock, arranged in alphabetical order. A notation is made against names of stockholders holding preferred stock, indicating that such stockholders also hold common stock.

(*c*) Proxies.

Statements

The following statements are prepared:

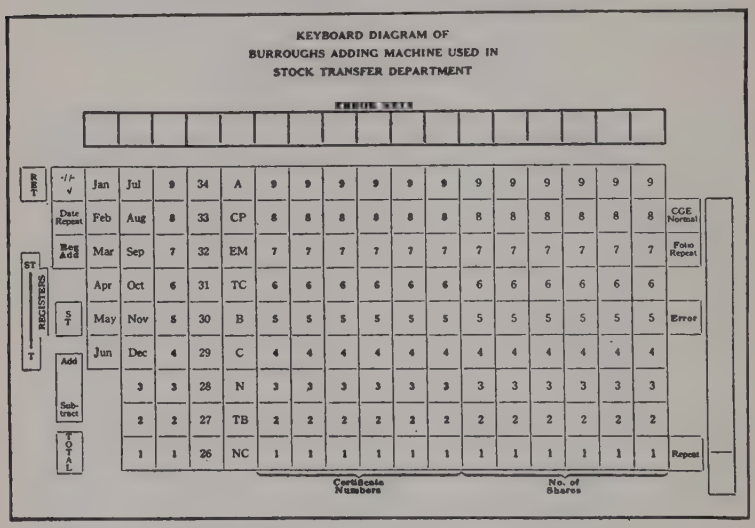
(*a*) Monthly Report (Form 365).

This report reflects the daily transactions of the Transfer Office.

(*b*) Report of Sales of Employee's Stock (Form 365).

Form 364

Keyboard Diagram of Burroughs Adding Machine Used in Stock Transfer Department



Form 364 shows diagram and keyboard of adding machine used in the Stock Transfer Department. The Accounting Department uses two standard "check writing" machines, stencils for which impress the name, address and amount of dividend; one automatic "envelope" machine for writing proxies and envelopes; one Graphotype machine for embossing stencils for Addressograph plates; and two standard Burroughs Stock Transfer poster machines.

The report shown in Form 365, on the opposite page, is forwarded to each plant monthly and shows date of sale, name of employee stockholder, certificate number, and series, also cumulative data as to number of subscribers and shares sold of each series.

Form 365

Monthly Report of Sales of Employees' Stock

THE CORPORATION
STOCK TRANSFER OFFICE

Report of Sales of Employees' Stock _____ Plant—Month of _____ 19____

DATE	NAME	MARK CLOSED ACCOUNT*	CERTIFICATE No.	NUMBER OF SHARES BY SERIES				
				1924	1925	1926	1927	1928
	TOTAL CLOSED ACCOUNTS MARKED*							

	SUBSCRIPTIONS					SHARES				
	1924	1925	1926	1927	1928	1924	1925	1926	1927	1928
TOTAL THIS MONTH										
" PREVIOUS REPORT										
" TO DATE										

FORM 366

DIVIDEND CHECK FOLDER

THE ..... CORPORATION
No ..... BROADWAY

NEW YORK CITY

In order that you may receive reports and other communications promptly, it is important that you keep us informed as to your correct address.

Your name and address, as shown on the envelope in which this communication was received, is taken from the stock records turned over to us by Equitable Trust Company, former transfer agents; if incorrect in any respect, or if at any time you change your address, please notify us promptly. The coupon below may be used for this purpose.

W. F. HARTMANN
Treasurer

STOCK TRANSFER DEPT.
THE ..... CORPORATION .....19...
No. ..... BROADWAY, NEW YORK, N. Y.

Change address of

Name .....
(Please print or typewrite indicating Mr., Mrs. or Miss)

From .....
Street and Number

.....
City State

To .....
Street and Number

.....
City State

Signature .....
Signature must correspond with name of stockholder on stock certificate

Forms Used in Accounting Division

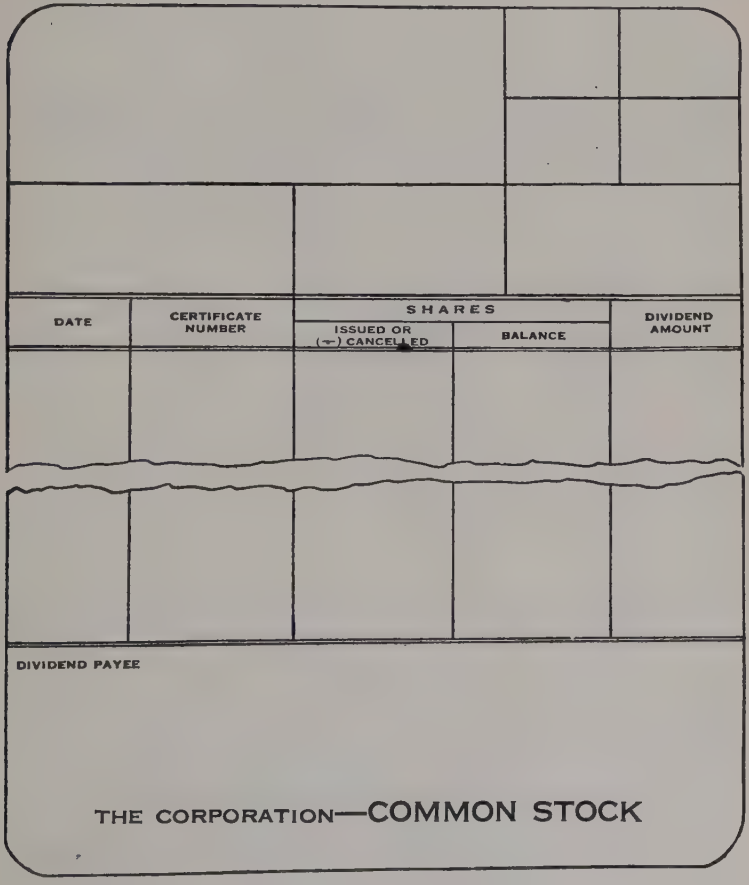
Form 367

Stockholders' Ledger Sheets

(8″ x 5″) Regular Accounts

Buff —Common Stock
Salmon—Preferred Stock

Card Record of stockholders' accounts other than active accounts.



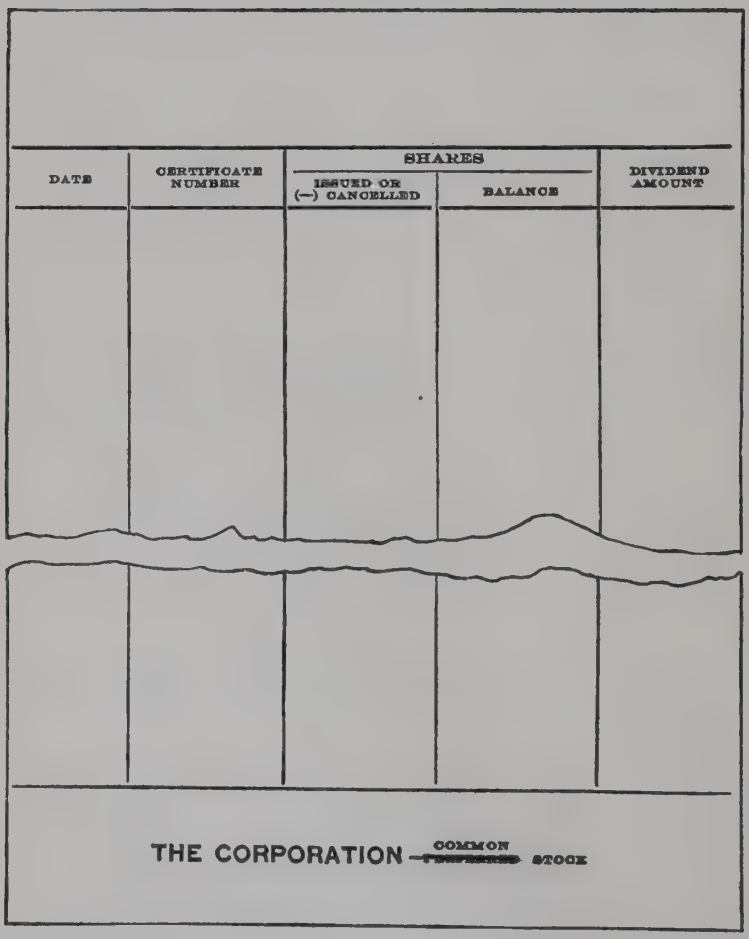
FORM 368

STOCKHOLDERS' RECORD CARDS

(16″ x 5″) Active Accounts

Buff —Common
White—Preferred

Similar to Stockholders' Record Cards, except that length is increased to provide for the larger number of postings.



Form 369

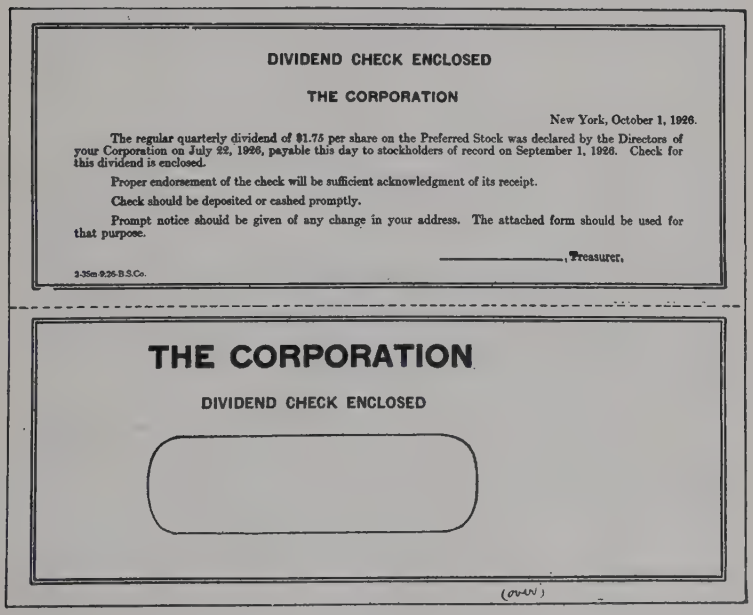
"Out Card"

Used to replace Record Cards temporarily removed for posting or other purposes.

Form 370

Dividend Check Folder

A combination dividend check folder, quarterly report, and change of address form, which is sent out with quarterly dividend checks.



DIVIDEND CHECK ENCLOSED

THE CORPORATION

New York, October 1, 1926.

The regular quarterly dividend of $1.75 per share on the Preferred Stock was declared by the Directors of your Corporation on July 22, 1926, payable this day to stockholders of record on September 1, 1926. Check for this dividend is enclosed.

Proper endorsement of the check will be sufficient acknowledgment of its receipt.

Check should be deposited or cashed promptly.

Prompt notice should be given of any change in your address. The attached form should be used for that purpose.

_____, Treasurer.

2-35m 9-26 B.S.Co.

THE CORPORATION

DIVIDEND CHECK ENCLOSED

(over)

Form 371

Daily Balance Sheet

Used to record daily transactions and balance of shares outstanding under each control letter.

The ..... Corporation

(Continued on next page)

Capital Stock Outstanding (Shares)

.....Stock (Date).....192...

Controls	Balance Close of Business (Date).....	Issued	Cancelled	Net Change	Balance Close of Business (Date).....
A					
B					
C					
D					
E					
F					
G					
H					
I & J					
K					
L					
M					
N & O					
P & Q					
R					
S					
T & U & V					
W					
X & Y & Z					
Brokers and Other Active Accounts					
(Orig. Issue)					

Form 372

Monthly Report of Transactions

THE _____ CORPORATION
STOCK TRANSFER DEPT
MONTHLY REPORT OF TRANSACTIONS — MONTH _____

DAY	NO. OF STOCKHOLDERS				NO. OF STOCKHOLDERS HOLDING BOTH PREFERRED AND COMMON		EMPLOYEES STOCKHOLDERS		NO. OF CERTIFICATES			
	PREFERRED		COMMON						PREFERRED		COMMON	
	NEW	CLOSED	NEW	CLOSED	NEW	CLOSED	NEW	CLOSED	ISSUED	CANCELLED	ISSUED	CANCELLED
1												
2												
3												
4												
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26												
27												
28												
29												
30												
31												
TOTAL												

NO. OF STOCKHOLDERS						CERTIFICATES OUTSTANDING		
	PREFERRED	COMMON	LESS HOLDERS OF BOTH PREF. AND COM.	NET TOTAL	EMPLOYEE (PREFERRED)		PREFERRED	COMMON
FIRST OF MONTH						FIRST OF MONTH		
NEW						ISSUED		
TOTAL						TOTAL		
CLOSED						CANCELLED		
DUPLICATIONS ELIMINAT.								
END OF MONTH						END OF MONTH		

NO. OF DIVIDEND CHECKS ISSUED			STOCK LISTS PREPARED				
	PREFERRED	COMMON		PREFERRED		COMMON	
				NO.	NO. OF NAMES	NO.	NO. OF NAMES
THIS MONTH			THIS MONTH				
TO DATE THIS YEAR			TO DATE THIS YEAR				

*To be supported by detail list, on form No. 10, showing separately by Plants, Name, Certificate No., and No. of Shares.

Form 373

List of Dividend Checks

For listing dividend checks by check numbers and control letters for balancing purposes. Checks returned from bank are checked against this list. *(See next page.)*

THE CORPORATION

LIST OF DIVIDEND CHECKS

_____ Town _____ 192_____

CHECK NUMBER	Group No. 00 AMOUNT	Group No. 00 AMOUNT	Group No. 00 AMOUNT	Group No. 00 AMOUNT	Group No. 00 AMOUNT	Group No. 00 AMOUNT	Group No. 00 AMOUNT
00							
01							
02							
03							
04							
05							
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92							
93							
94							
95							
96							
97							
98							
99							
Total							

Form 374

Monthly Report of Sales of Employees' Stock

Used to notify each plant of employees' stock used.

Form 375

Notice of Change of Address

Form to send out to stockholders (on request) to record changes of address.

NOTICE OF CHANGE OF ADDRESS

THE CORPORATION
Stock Transfer Office
No.....Broadway, New York, N. Y.

_____ 192__

Change address of

PLEASE PRINT OR TYPEWRITE

Name _____
(Please indicate Mr., Mrs. or Miss)

From _____
Street and Number

_____
City State

To _____
Street and Number

_____
City State

Signature _____
Signature must correspond with name of stockholder on stock certificate

THE CORPORATION
Stock Transfer Office
No.....Broadway, New York, N. Y. _____

In accordance with instructions received we have recorded your change of address on the books of this Corporation to read as shown below.

Yours very truly,

_____
Asst. Sec'y and Asst. Treas.

Form 376

Dividend Order

To be filled out by stockholder requesting payment of dividends to a payee other than himself. Reverse side provides for acknowledgment before a Notary Public.

THE CORPORATION
Stock Transfer Office
No.....Broadway, New York, N. Y. _____

In accordance with instructions received, our records now show that dividends on stock of this Corporation to which you are entitled will be paid and mailed to the dividend payee whose name and address is shown below.

Yours very truly,

_____
Asst. Sec'y and Asst. Treas.

DIVIDEND ORDER

To the Treasurer of the
THE CORPORATION
No.....Broadway, New York, N. Y.

_____ 192__

Until this order shall be revoked, in writing, by the undersigned as stockholder of your Corporation, checks for all dividends payable on stock now or hereafter standing in the name of the undersigned should be made payable to the order of and mailed to

PLEASE PRINT OR TYPEWRITE

Name _____
(Please indicate Mr., Mrs. or Miss)

Street and No. _____

City _____ State _____

Signature _____
Signature must correspond with name of stockholder on stock certificate

Stockholder's signature must be acknowledged before a Notary Public in the appropriate form on the reverse hereof.

Form 377

"Similarity" Letter

Requesting stockholders who apparently have accounts in more than one name to notify us as to correct name and address, and certificate numbers of stock owned, so that duplications may be eliminated.

THE CORPORATION

NO. BROADWAY

NEW YORK

IN REPLY REFER TO

On shares of the stock of this Corporation were registered in your name as above.

There appears to be a duplication of your name or address on our record of stockholders, and we would appreciate your supplying the information requested.

Yours very truly,

Asst. Sec'y and Asst. Treas.

(1) Correct Name and Address

Please print or typewrite

Name (Please indicate Mr., Mrs. or Miss)

Street and Number

City State

(2) Do you own other shares of this corporation's stock registered in your name? If so, how many?_____

(3) If convenient kindly insert below the certificate numbers and the number of shares of each certificate you hold.

Certificate No.	Shares	Certificate No.	Shares	Certificate No.	Shares

Signature_____
(As shown on Stock Certificate.)

Please return this letter promptly in the enclosed Stamped Envelope.

Form 378

Stockholders' List

Required for the Annual Meeting of Stockholders. Separate lists for common and preferred are prepared in duplicate from addressograph plates, and number of shares posted by adding machine from Stockholders' Record Cards. Original of each list is forwarded to Fidelity Union Trust Company for certification, and duplicates used for checking proxies received.

THE ..... CORPORATION

LIST OF HOLDERS OF SEVEN PER CENT CUMULATIVE PREFERRED STOCK AS OF THE CLOSE OF BUSINESS MARCH 5, 1927

	Stockholder	Number of Shares		
	Sheet No.			

Form 379

General (Issued by Assistant Treasurer's Office)

Request to Return Certificate

Requesting return of certificates on which name is incorrectly spelled. This letter is issued when "Similarity" letters are returned indicating misspelling in names.

THE ..... CORPORATION
No. ... Broadway
NEW YORK

IN REPLY REFER TO

Your reply to our recent request indicates that you hold certificates for stock of this Corporation which are not issued in your correct name.

It is mutually desirable that such inaccuracies be corrected, and in order that this may be done we suggest that you return your stock certificates which are incorrect, endorsing each certificate in your correct name as it should appear on our records, and noting below "incorrectly described on the face of this certificate as (insert here name as shown on certificate)."

Your signature should be guaranteed by either a New York Stock Exchange firm, a New York bank or Trust Company or by a bank having a New York correspondent. The incorrect certificates should be forwarded to this office and new certificates will be returned promptly. We suggest that you return the incorrect certificates to us through the firm of brokers or bank which originally purchased them for your account and which will undoubtedly guarantee your signature.

The new certificates will be issued without charge.

Very truly yours,

.....

Assistant Secretary and Assistant Treasurer.

FORM 380

LETTER USED BY BROKERS

Form letter to be used by brokers, etc., requesting issue of a new certificate to replace certificate on which name was incorrectly stated. Also includes agreement to indemnify this company against any possible loss on this account.

THE ..... CORPORATION
No. ... BROADWAY,
NEW YORK CITY.

GENTLEMEN:

On .....19...., you issued in accordance with our instructions, ... Corporation Stock certificate

No. ..... for ..... shares of .....
stock in the name of .....
This name was given to you in error, the correct name and address being .....

Will you please issue a new certificate in the correct name? In consideration of your so doing, we agree to indemnify you and save you harmless against all losses, claims, liability and expense which may arise by reason of your issuing such new certificate.

Yours very truly,

FORM 381

LETTER CONCERNING REQUIREMENTS AS TO STOCK IN NAME OF DECEASED PERSON

Stating requirements to be complied with before stock standing in the name of a deceased person may be transferred.

THE ..... CORPORATION
No. ... Broadway
NEW YORK

IN REPLY REFER TO

In order to effect a transfer of capital stock of the ..... Corporation standing upon its records in the name of a deceased person, it is necessary that the Executor, Administrator, or other duly appointed legal representative, present to the Corporation with the stock certificate properly endorsed:

1. A duly authenticated or certified copy of the Will, if any, of the decedent.

2. A certificate of the proper Surrogate's or Probate Court, showing the appointment of the Executor, Administrator, or other legally appointed representative and that such appointment is still in force. Such certificate must be dated not longer than six months prior to the date of presentation thereof to the Corporation.

3. A certified copy of the court order authorizing sale or distribution where the laws of the State in which the estate is being administered require such order.

4. A written waiver or consent from the Comptroller of the Treasury of the State of New Jersey, under the Transfer Inheritance Tax Law of that state unless the decedent died after July 1, 1926, and was at the time of his death a non-resident of the State of New Jersey, and, in case decedent was a resident of the State of New York, a written waiver or consent from the Tax

Commission of the State of New York, under the Transfer (Inheritance) Tax Law of that State.

5. The signature to the assignment or power of transfer must be satisfactorily guaranteed by a New York Stock Exchange house or a bank or trust company having a New York correspondent.

6. The transfer of shares of stock of the Corporation is subject to a New York State Tax of two cents per share and a Federal Tax of two cents per share. The requisite stamps or their equivalent in cash must accompany the certificate of stock to be transferred.

7. Stock may not be transferred into the individual name of an Executor or Administrator unless there is filed with the Corporation either a court order authorizing such transfer or an affidavit from the executor or administrator stating either that all of the debts of the estate have been paid or that there are sufficient remaining assets to provide for the payment of such debts.

Yours very truly,

THE ..... CORPORATION

By.....

Asst. Sec'y and Asst. Treas.

FORM 382

MEMORANDUM TO GENERAL COUNSEL

To accompany legal papers submitted as evidence of authority of person executing assignment on stock certificate in capacity of Executor, Administrator, Trustee, Guardian, Attorney-in-fact, officer of corporation, society, etc., on which approval is required before transfer is effected. Copy to be signed and returned.

THE ..... CORPORATION

STOCK TRANSFER OFFICE

Date.....

Memo. to.....

Stock in name of.....

Presented by .....

Certificate(s) No.(s).....

Endorsed .....

Stock to be transferred to.....

Following papers attached:

Certified copy of will;

Probate certificate;

Court order;
Affidavit of executor or administrator;
Waiver state of.....
Indemnity Bond,
Certified copy of resolution adopted by
.....

THE ..... CORPORATION
By.....
Asst. Sec'y and Asst. Treas.

FORM 383

NOTARY PUBLIC ACKNOWLEDGMENT FORM

For use by an Executor or Administrator of an estate.

STATE OF
COUNTY OF } ss.

Before me, the undersigned authority, on this day personally appeared
, who being by me duly sworn, deposes
and says that he is (state whether Executor
or Administrator) of the estate of
deceased; that the said deceased was, prior to his death, personally known to him; and that
the said deceased was, at the time of his death on , and
for years prior thereto, a resident of

Sworn to and subscribed before me
this day of , 19

FORM 384

NOTICE OF MEETING AND PROXY

THE ..... CORPORATION

NOTICE OF TWENTY-SECOND ANNUAL MEETING OF STOCKHOLDERS

The Twenty-second Annual Meeting of the Stockholders of The ..... Corporation, a New Jersey corporation, will be held at its principal and registered office, at No. .... Broad Street, on *Tuesday, April 5, 1927, at 12 o'clock noon.* At said meeting the following matters will be presented to stockholders for their action:

(1) The election of five directors to serve for a term of three years;

(2) The approval and ratification of all action of the Board of Directors of said Corporation since the Twenty-first Annual Meeting of its stockholders held on April 6, 1926; and

(3) The transaction of such other business as may properly come before said meeting.

The books for the transfer of shares of the Seven Per Cent Cumulative Preferred Stock and of the Common Stock of said Corporation will be closed at the close of business on Saturday, March 5, 1927, and, unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on Wednesday, April 6, 1927.

Newark, New Jersey, February 21, 1927.

....., Secretary.

If you do not expect to be at the meeting, please date and sign the attached proxy and return it in the accompanying envelope addressed to the undersigned, No. ... Broadway, New York City. A proxy to be executed by a corporation should be signed in its name by its President or Vice-President and its corporate seal should be affixed and attested by its Secretary or Assistant Secretary or other proper officer.

Because of the great amount of detail necessary to prepare for this meeting, the immediate return of proxies is desired.

.....
Secretary.

THE ..... CORPORATION
PROXY FOR ANNUAL MEETING, APRIL 5, 1927

Please sign this proxy and return it promptly in the accompanying envelope

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, a holder of stock in The ..... Corporation, a New Jersey cor-

poration, hereby constitutes and appoints ....., ..., ..., and ....., the attorneys and proxies, and each of them (with full power to act without the others) the attorney and proxy, of the undersigned, irrevocable, with full power of substitution, for and in the name, place and stead of the undersigned, to attend the Twenty-second Annual Meeting of the stockholders of said Corporation to be held at its principal and registered office at No. ... Broad Street, Newark, New Jersey, on Tuesday, April 5, 1927, at twelve o'clock noon, and there or at any adjournment or adjournments thereof to vote the number of shares of stock the undersigned would be entitled to vote if then personally present: (1) for five persons to serve as directors of said Corporation, each for the term of three years; (2) in favor of the approval and ratification of all action of the Board of Directors of said Corporation since the Twenty-first Annual Meeting of its stockholders held on April 6, 1926; and (3) in the transaction of such other business as may properly come before said meeting or any adjournment or adjournments thereof; as fully and with the same effect as the undersigned might or could do if personally present at said meeting or such adjournment or adjournments thereof; hereby ratifying and confirming all that said attorneys and proxies, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof, and hereby revoking any proxy or proxies heretofore given by the undersigned to any person or persons whomsoever.

WITNESS the hand and seal of the undersigned, this .....day of .....1927.

..... (SEAL)

---

10. Stock Transfer Procedure for Small Companies

The detailed procedure described in the preceding pages is not applicable to small concerns. For such enterprises it is usually practicable to keep two books for this purpose, namely: a stock journal and a stock ledger. These if properly kept will afford information sufficient to trace the history of each share regardless of the number of times it may be transferred. In Forms 385 and 386 are shown specimen sheets for a stock journal and a stock ledger such as is proposed by the Secretary of State of the State of Ohio.

Form 385

Stock Journal

Stock Cancelled					Stock Issued						
Date of Assignment	By whom assigned	Ledger Folio	No. of Certificate	Number of Shares	Date of Issue	To whom assigned and Issued	Ledger Folio	No. of Certificate	Number of Shares	Par Value of Shares	We, the undersigned, hereby acknowledge the receipt of the stock set opposite our respective names:
19....					19....						
Jan. 2	The Ohio Company	..	..	..	Jan. 2	John Jones	1	1	10	$1,000.00	John Jones
	John Jones	1	1	10	Feb. 29	Wm. Smith	26	32	10	1,000.00	Wm. Smith

Form 386

Stock Ledger

John Jones, Columbus, Ohio

Date of Issue	Journal Folio	No. of Certificate Cancelled	From or to Whom Transferred	No. of Certificates Issued	Date of Assignment	Debtor	Creditor	Balance
19...					19..			
Jan. 2	1	..	From the Ohio Company	1	Jan. 2	$1,000.00	.....	$1,000.00
Feb. 29	1	1	To Wm. Smith	32	Feb. 1	.....	$1,000.00	.....

The explanation given for the entries in Forms 385 and 386 on the preceding page as given in the suggestions made by the Secretary of State of the State of Ohio is as follows:

The hypothetical entries which appear in the last two forms indicate that on January 2nd, 19.., John Jones subscribed for ten shares of the capital stock of The Ohio Company, of the total par value of $1,000.00; that his ledger account is on Folio No. 1 of the Stock Ledger; that the number of stock certificate issued to him for such ten shares is No. 1; that he has received and receipted for such certificate; that on February 1st, 19.., he assigned the whole of said ten shares to William Smith; that on February 29th, 19.., said Smith presented said certificate to the secretary for transfer, and that a new certificate was issued to him, numbered 32, which was received and receipted for; that the further history of said ten shares begins in the ledger account of said Smith, on Ledger Folio No. 26; that when said John Jones subscribed for said shares, he was debited in the ledger account with their par value, $1,000.00; that when he sold the same to said Smith, he was credited with the same amount; and that, as the debit and credit columns in his ledger account then balanced, this showed that his stock account was closed, and that he was no longer a stockholder in the company, having been succeeded by said William Smith, as to his whole holding of stock. Had John Jones sold his stock to more than one person, it would have been necessary to open an account in the stock ledger with each assignee.

These forms may be changed to meet the individual tastes of the bookkeeper; but whatever forms are adopted, the facts set out in Forms 385 and 386 reproduced on the preceding page should appear.

FORM 387

REQUIREMENTS OF INDEPENDENT TRANSFER AGENT
FIRST TRUST AND SAVINGS BANK

PAPERS REQUIRED WHERE BANK IS TO ACT AS
TRANSFER AGENT OR REGISTRAR

1. Copy of Articles of Incorporation of the Company, certified by the Secretary of State; or of Charter, similarly certified.
2. Copy of Company's By-Laws with the certificate under seal of the Company that it is a true copy.
3. Copy, similarly certified, of a Resolution of the Board of Directors, appointing us Transfer Agent-Registrar, in a form drawn up or approved by us before adoption.
4. Submission of printers' proof of all stock certificates before their preparation in finished form.

In this connection we use the following form for *Transfer Agent*—

COUNTERSIGNED .....
FIRST TRUST AND SAVINGS BANK
(Chicago) *Transfer Agent*
By .....
Assistant Secretary

And the following form for *Registrar*—

REGISTERED .....
FIRST TRUST AND SAVINGS BANK
(Chicago) *Registrar*
By .....
Assistant Secretary

5. Specimens of all stock certificates to be used, with certificate under seal of the Secretary of the Company affixed thereto that they are true copies of the stock certificates adopted by the Company.
6. Signatures of all officers of the Company and of the Transfer Agent-Registrar—authorized to sign certificates, those of the Company to be certified under seal by the Secretary to be those of the officers authorized to sign the stock certificates. This Bank will furnish a form for the signatures of the officers of the Company, and Secretary's certificate, and will itself obtain the signatures of officers of other Banks acting as Transfer Agent or Registrar.
7. List of holders of Preferred and Common Capital stock of

the Company outstanding, if any, showing the number of each certificate, the name in which issued, and the number of shares represented thereby; such list to be certified by the Secretary of the Company to be correct.

8. Opinion of counsel as to
   (1) Validity of
      (a) Company's organization,
      (b) The stock issue, and the form of certificates adopted.
   (2) The authority of the Company to do the things set out in its Articles of Incorporation and By-Laws.

FORM 388

REQUIREMENTS OF TRANSFER AGENT REGARDING SIGNATURES

TO THE FIRST TRUST AND SAVINGS BANK, CHICAGO, ILLINOIS:

State of .....
} ss.
County of .....

The undersigned ....., HEREBY CERTIFIES that he is the duly elected and qualified .....Secretary of ..... a corporation organized and existing under the laws of the State of .....; and, as such ..... secretary, that he has custody and control of the corporate seal, records and files of said corporation; and

HE FURTHER CERTIFIES that the following are the true signatures of the within named officers of said corporation, and that said officers executing such signatures are duly elected and now in office, and are duly authorized to execute the following described securities of said corporation, or any statement, order or other paper which the following described instrument provides they may execute, to wit:

.....
.....
.....
.....
.....
.....
.....
.....

and that the names of said officers, their titles and signatures are

as shown on the back of this certificate. .....

.....

HE FURTHER CERTIFIES that the seal affixed to this certificate is the corporate seal of said corporation.

The undersigned agrees for and on behalf of said corporation to give immediate notice to the above named First Trust and Savings Bank when any of said officers, or any officer hereafter vested with authority to execute any of said securities or any statement, order or other paper as aforesaid, no longer shall be vested with authority to sign for said corporation as aforesaid, and, to notify said bank from time to time of the appointment of other or additional officers authorized to sign as aforesaid, and to lodge with said bank specimen signatures of such other or additional officers.

IN WITNESS WHEREOF the undersigned has hereunto set his hand and affixed the corporate seal of said corporation, this ..... day of ....., A. D. 19....

.....

.....*Secretary.*

Corporate Seal.

FORM 388-*a* *(Continued)*

(REVERSE SIDE)

TRUST NO. .....

Following are the names, titles and signatures of the officers referred to in the within certificate:

Mr.	the President	will sign	President
Mr.	the.....Vice-President	will sign	.....Vice-President
Mr.	the.....Vice-President	will sign	.....Vice-President
Mr.	the Secretary	will sign	Secretary
Mr.	the Asst. Secretary	will sign	Asst. Secretary
Mr.	the Treasurer	will sign	Treasurer
Mr.	the Asst. Treasurer	will sign	Asst. Treasurer
Mr.	the.....	will sign	.....
Mr.	the.....	will sign	.....

11. Independent Transfer Agents

Most corporations find it advantageous to employ independent transfer agents, many of the larger trust companies acting in this capacity. So much detailed work is involved that a trust company, with wide experience and numerous companies on its list of customers, can usually perform the duties of transfer agent better than the company itself. Whether performed by the company itself or by an independent agent the procedure is practically the same. The independent transfer agent will require certain information, however, before it undertakes to act as transfer agent. Form 387 shows the requirements of the First Trust and Savings Bank of Chicago in this connection. The requirements of this bank regarding signatures of the officers of the company for which it acts as transfer agent are shown in Form 388 and Form 388*a* (reverse). Form 389 shows resolution of board of directors appointing this bank sole transfer agent. Form 390 shows resolution of board of directors appointing this bank sole registrar. Form 391 shows record of registration kept by this bank for preferred stock of Fairbanks, Morse & Company. It is made out in duplicate, the duplicate being sent to the Bankers Trust Company of New York. The receipt used by this bank where accepting stock for transfer is shown in Form 392. (1) thereof is kept by the transfer agent, (2) goes to the registrar with the newly issued certificate, (3) goes to the broker. With it he later claims the new certificate from the registrar.

FORM 389

RESOLUTION APPOINTING TRANSFER AGENT

SOLE TRANSFER AGENT

CERTIFIED COPY OF RESOLUTIONS
of the
BOARD OF DIRECTORS
of

.....

WHEREAS, This Company is a corporation organized and existing

under and by virtue of the laws of the State of.....
and has an authorized capital stock of .....Dollars
($.....) consisting of ..... shares of.....
stock of the par value of $..... per share, and .....
shares of .....stock of the par value of $..... per
share, and ..... shares of ..... stock of the par
value of $..... per share, all of which is to be issued
as fully paid and non-assessable stock; and

WHEREAS, This Company desires to appoint a transfer agent in the City of Chicago, Illinois, for the transfer of its..... stock and to define its duties;

NOW, THEREFORE, BE IT RESOLVED:

FIRST: that FIRST TRUST AND SAVINGS BANK, an Illinois corporation having its office in the City of Chicago in said State, be and it hereby is appointed agent of this Company, with the title "Transfer Agent", for the transfer of certificates

.....
for the ..... capital stock of this Company.
.....

SECOND: that for the purpose of the original issue of certificates representing such stock, the Transfer Agent is hereby directed:

To record and countersign as Transfer Agent, certificates (both temporary and permanent) for not exceeding
..shares of such.....stock, of the par value of $.....per share
..shares of such.....stock, of the par value of $.....per share
..shares of such.....stock, of the par value of $.....per share
when such certificates have been signed by*.....
.....
.....of the Company, in such names and for such number of shares as may be indicated in orders signed in the name of the Company by its ..... or .....
and attested by its Secretary or Assistant Secretary, under its corporate seal, which orders shall give the addresses of the stockholders named therein. Such orders shall be conclusive in favor of the Transfer Agent and binding upon the Company. Upon countersignature and recordation of such certificates by the Transfer Agent they shall be delivered to.....,
.....Registrar of this Company for registration, and shall then be delivered in accordance with such orders.

THIRD: that the Transfer Agent be and it hereby is authorized

*These resolutions should correspond to the provisions of the charter or certificate of incorporation and by-laws.

and directed to make exchanges and transfers from time to time upon the books of this Company of such certificates for such .....stock (both temporary and permanent) as may be surrendered for exchange or transfer, properly endorsed and duly stamped as may be required by law, bearing the seal of the Company and the signatures of the proper officers of the Company as provided in paragraph SECOND of these resolutions, and the signatures of its Transfer Agent and Registrar, or signatures believed by such Transfer Agent to be genuine, and to enter of record and countersign new certificates accordingly when the same shall have been signed by the proper officers of the Company as provided in paragraph SECOND of these resolutions, and to deliver such certificates when so countersigned and entered of record to .....Registrar, for registration, and, when so registered, for delivery to the persons entitled thereto; and to perform all other duties incident to the office of Transfer Agent.

FOURTH: that specimen signatures of the officers of this Company authorized to sign certificates of stock as aforesaid, and of the officers of the Registrar authorized to sign for the Registrar, and specimen stock certificates, be lodged forthwith with the Transfer Agent to be used by it for the purposes of comparison; and that the Transfer Agent shall be protected and held harmless in recognizing and acting upon any signature or certificate believed by it in good faith to be genuine. When any officer of this Company or of the Registrar shall no longer be vested with authority to sign for this Company or for the Registrar, as the case may be, written notice thereof shall immediately be given to the Transfer Agent and until receipt of such notice the Transfer Agent shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by it in good faith to be genuine.

FIFTH: that from time to time additional officers may be appointed by resolutions of the Board of Directors of this Company not inconsistent with its by-laws, to sign certificates of stock on behalf of this Company, and in like manner additional officers may be appointed to sign on behalf of the Registrar, and in every case certified copies of the resolutions effecting the appointments and specimen signatures of such officers shall forthwith be lodged with the Transfer Agent.

SIXTH: in the event that any such certificate shall become lost or destroyed, before any new certificate shall be issued in lieu thereof, a satisfactory bond shall be required in such amount as

may be provided by the by-laws of this Company, and in any event not less than the value of such certificate, wherein the Transfer Agent shall be named as one of the obligees. The bond shall be in form satisfactory to the Company and the Transfer Agent.

SEVENTH: that when the Transfer Agent deems it expedient, it may apply to....., counsel for this Company, or to its own counsel, for instructions or advice, and for any action in accordance with such instructions or advice this Company will fully protect and hold it harmless from any and all such liability.

EIGHTH: that the.....President and the.....Secretary of this Company be and they hereby are directed to certify a copy of these resolutions under the seal of this Company and to lodge the copy, together with certified specimen certificates of the stock of this Company in the forms duly adopted by it, certified copies of the charter or certificate of incorporation and all amendments thereto (properly certified by the Secretary of State) and of the by-laws of this Company, with the Transfer Agent, and to furnish to the Transfer Agent certified copies of any amendments that may from time to time be made to the charter or certificate of incorporation or by-laws.

We, the undersigned, ...President and..... Secretary, do hereby certify that the foregoing is a true and complete copy of resolutions duly adopted at a meeting of the Board of Directors of the..... (hereinafter called "Company") duly called and held at ..... in the City....., State of ....., on the ..... day of ....., a quorum being present, as the same appears on the records of the Company in our custody.

We further certify that the annexed certificates are true and correct specimens of the certificates of the capital stock of the Company which have been duly adopted by the Company, and the annexed signature certificate sets forth the officers of the Company authorized to sign such certificates, and that the signatures set opposite their respective names are specimens of the genuine signatures of such officers.

We further certify that the Company was duly organized under the laws of.....and that under the accompanying charter or certificate of incorporation and all amendments thereto, certified by the Secretary of the State, the Company has an authorized capital stock of $....., subdivided as set out in the foregoing resolutions.

WITNESS our hands and the seal of the Company this..... day of.....

.....President

.....Secretary

[Corporate Seal]

Form 390

Resolution Appointing Registrar

Sole Registrar

CERTIFIED COPY OF RESOLUTIONS
of the
Board of Directors
of

.....

Whereas, This Company is a corporation organized and existing under and by virtue of the laws of the State of..... and has an authorized capital stock of.....Dollars ($.....) consisting of ..... shares of ..... stock of the par value of $..... per share, and ..... shares of ..... stock of the par value of $..... per share, and ..... shares of ..... stock of the par value of $..... per share, all of which is to be issued as fully paid and non-assessable stock; and

Whereas, this Company desires to appoint a Registrar in the City of Chicago, Illinois, for the registration of its..... stock and to define its duties;

Now, Therefore, be it Resolved:

FIRST: That FIRST TRUST AND SAVINGS BANK, an Illinois corporation having its office in the City of Chicago in said State, be and it hereby is appointed agent of this Company, with the title "Registrar" for the registration of certificates

.....

for the .....capital stock of this Company.

.....

SECOND: That for the purpose of the original issue of certificates representing such stock, the Registrar is hereby directed:

To register and countersign as Registrar certificates (both temporary and permanent) for not exceeding

....shares of such....stock, of the par value of $.....per share

....shares of such....stock, of the par value of $.....per share

....shares of such....stock, of the par value of $.....per share

when presented to it for that purpose and signed by*.....
.....
....., of this Company and countersigned by the Transfer Agent of this Company, for such number of shares as may be indicated in an order signed in the name of the Company by its .....or.....and attested by its Secretary or Assistant Secretary, under its corporate seal. Such order shall be conclusive in favor of the Registrar and binding upon the Company.

THIRD: That the Registrar be and it is hereby authorized and directed to register exchanges and transfers from time to time of certificates for such capital stock (both temporary and permanent), upon the cancellation of certificates for a like amount of stock of the same class, signed by the proper officers of this Company, as provided in Paragraph SECOND of these resolutions, and countersigned by the Transfer Agent and the Registrar, or bearing signatures believed by the Registrar to be genuine, and to register and countersign new certificates accordingly when they shall have been signed by the proper officers of this Company as provided in paragraph SECOND of these resolutions and countersigned by the Transfer Agent, or shall bear signatures believed by the Registrar to be genuine, and to deliver the new certificates when so registered to the persons entitled thereto; Provided, however, that the Registrar shall be under no duty whatever in connection with the names in which certificates are issued or the correctness of any transfer from one name to another.

FOURTH: That specimen signatures of the officers of this Company authorized to sign certificates of stock as aforesaid, and of the officers of the Transfer Agent authorized to sign for the Transfer Agent and specimen stock certificates, be lodged forthwith with the Registrar to be used by it for the purpose of comparison; and that the Registrar shall be protected and held harmless in recognizing and acting upon any signature or certificate believed by it in good faith to be genuine. When any officer of this Company or of the Transfer Agent shall no longer be vested with authority to sign for this Company or for the Transfer Agent, as the case may be, written notice thereof shall immediately be given to the Registrar and until receipt of such notice the Registrar shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by it in good faith to be genuine.

FIFTH: That from time to time additional officers may be appointed by resolutions of the Board of Directors of this Company

*These resolutions should correspond to the provisions of the charter or certificate of incorporation and by-laws.

not inconsistent with its by-laws, to sign certificates of stock on behalf of this Company, and in like manner additional officers may be appointed to sign on behalf of the Transfer Agent, and in every such case certified copies of the resolutions effecting the appointments and specimen signatures of such officers shall forthwith be lodged with the Registrar.

SIXTH: That when the Registrar deems it expedient, it may apply to.....counsel for this Company or to its own counsel, for instructions or advice, and for any action in accordance with such instructions or advice this Company will fully protect and hold it harmless from any and all liability.

SEVENTH: In the event that any such certificate shall become lost or destroyed, before any new certificate or certificates shall be registered in lieu thereof, a satisfactory bond shall be required in such amount as may be provided by the by-laws of this Company, and in any event not less than the value of such certificate, wherein the Registrar shall be named as one of the obligees. The bond shall be in form satisfactory to the Company and to the Registrar.

EIGHTH: That the.....President and the..... Secretary of this Company be and they hereby are directed to certify a copy of these resolutions under the seal of this Company and to lodge the copy, together with certified specimen certificates of the stock of this Company in the forms duly adopted by it, certified copies of the charter or certificate of incorporation and all amendments thereto (properly certified by the Secretary of State) and of the by-laws of this Company, with the Registrar, and to furnish to the Registrar certified copies of any amendments that may from time to time be made to the charter or certificate of incorporation or by-laws.

We, the undersigned, ...President and..... Secretary, do hereby certify that the foregoing is a true and complete copy of resolutions duly adopted at a meeting of the Board of Directors of the..... (hereinafter called "Company") duly called and held at ..... in the City....., State of ....., on the..... day of ....., a quorum being present, as the same appears on the records of the Company in our custody.

We further certify that the annexed certificates are true and correct specimens of the certificates of the capital stock of the Company which have been duly adopted by the Company, and the annexed signature certificate sets forth the officers of the Company authorized to sign such certificates, and that the signa-

tures set opposite their respective names are specimens of the genuine signatures of such officers.

We further certify that the Company was duly organized under the laws of.....and that under the accompanying charter or certificate of incorporation and all amendments thereto, certified by the Secretary of the State, the Company has an authorized capital stock of $....., subdivided as set out in the foregoing resolutions.

WITNESS our hands and the seal of the Company this..... day of.....

.....President

.....Secretary

[Corporate Seal]

Form 391

Record of Registration

PREFERRED STOCK OF

Fairbanks, Morse & Company

Record of registration at Chicago — FIRST TRUST AND SAVINGS BANK, Registrar

Date

	Chicago	Shares	New York	Shares	Certificates Issued		Date of Cancellation	Balances	
					Certificate No.	Shares		Chicago	New York

FORM 392

RECEIPT KEPT BY TRANSFER AGENT

No. 620	No. 620	No. 620
DATE.....	DATE.....	DATE.....
Received for Transfer from	*Received for Transfer from*	*Received for Transfer from*
.....	.....	.....
.....Shares of Stock of	.....Shares of Stock of	.....Shares of Stock of
.....Shares of Preferred Stock of	.....Shares of Preferred Stock of	.....Shares of Preferred Stock of
.....Shares of Common Stock of	.....Shares of Common Stock of	.....Shares of Common Stock of
(Name of Company)	(Name of Company)	(Name of Company)
FIRST TRUST AND SAVINGS BANK (CHICAGO)	FIRST TRUST AND SAVINGS BANK (CHICAGO)	FIRST TRUST AND SAVINGS BANK (CHICAGO)
OLD CERT. NOS	NEW CERT. NOS.	By.....
.....	.....	Asst. Secretary.
.....	.....	
.....	.....	
NEW CERT. NOS.	.....	New Certificates delivered at the
.....	.....	
.....	.....	upon Surrender of this Receipt
(1) Kept by Transfer Agent	(2) To Registrar with Securities	(3) To Broker

1026

FORM 393
STOCK TRANSFER BOOK

No. Certificate Surrendered.	No. of Shares.	Date.	For valuable consideration, I hereby sell, assign and transfer unto the person whose name is set opposite as transferee, the number of shares indicated by the certificate surrendered.	Transferee.	No. new certificates issued.	No. of Shares.	I, the undersigned, hereby acknowledge receipt of the certificate for the number of shares set opposite my name.
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

FORM 394
STOCKHOLDERS' LEDGER

When Stock issued 19....	Certificate No.		Stock Register Page	No. of Shares of stock	DEBITS
	Old	New			To par value of stock

FORM 394 *(Continued)*
STOCKHOLDERS' LEDGER

CREDITS		Date of Transfer			No. in Transfer Record	Surrendered Certificates	
By cash, Mdse. and Notes	By amount of dividends	Month	Day	Year		Number	No. of Shares

FORM 395
STOCK LEDGER

John Jones.....Street, Richmond, Va.

Date	No. of Certificate	No. of Transfer	Transferee	No. of Shares Issued	No. of Shares Transferred	Balance
1913						
Jan. 10	1			10		10
Dec. 31	23	8	James Gray		4	6

FORM 396

TRANSFER BOOK

Transfer Record of the .....

Surrendered		Transfer No.... Entered on Stock Register Page	Re-issued	
No. of Certificate	No. of Shares		No. of Certificate	No. of Shares
.....	.....		.....	.....
.....	.....		.....	.....
.....	.....		.....	.....
.....	.....		.....	.....

For Value Received, ...
hereby surrender Certificate No. .... for ..... shares of the capital stock of the above corporation, and ..... hereby authorize the cancellation of said Certificate and the issue of new Certificate therefor to the following persons:.....
.....
.....
.....
.....
.....

Date .....

Signed .....(Seal)

Money paid in on subscriptions should be charged to cash and credited to the account of the subscriber either in the regular ledger or in the subscriber's ledger. A subscription account should be opened with each subscriber, such account being closed when his subscription is paid in full. Consequently the subscription ledger has an open balance in it only so long as some of the subscribers' accounts remain unpaid.

As soon as a subscriber has paid the full amount of his subscription a stock certificate should be issued to him, stating the number of fully paid shares to which he is entitled. It is the duty of the President or Secretary to execute and deliver to each such subscriber a certificate whereon is shown the amount of stock owned by him in the

corporation. A careful record must be kept of all stock subscribed and transferred and it is the duty of the Board of Directors to see that this is done. It is ordinarily the Secretary's duty to keep the records of subscribers and transfers of stock. The records required for these purposes naturally vary with the type and size of the company. When a stockholder desires to transfer one or more shares of stock to another party he assigns his certificate and delivers it to a duly authorized attorney or to the assignee and the assignee is entitled, on demand, to have the transfer made by a proper corporate official, usually the Secretary. Details of this procedure are explained elsewhere.

11. Stock Certificate Book

Every corporation issuing capital stock must have a stock certificate book. Essentially each page in the said certificate book is composed of the blank form of the stock certificate together with a stub upon which is entered essentially the same information as appears in the certificate itself. Following is a form in common use.

FORM 397

STOCK CERTIFICATE BOOK

Certificate No. ..... for ..... Shares Issued to..... ..... Dated....., 19... Transferred from ..... Dated....., 19... No. Original Certificate ..... No. Original Shares ..... No. of Shares Transferred ..... Received this Certificate:	No. ..... The.....Company ..... Shares Capital, $..... ..... Shares. Par Value, $..... each This Certifies, That..... is the holder of ..... Shares of ..... Dollars, each, fully paid up, of the Capital Stock of The ..... Company, transferable only on the books of the Company, in person or by attorney, on the surrender of this certificate. Witness the seal of said Company and the signatures of its President and Secretary, at ....., Ohio, this ..... day of ....., 19.... (Seal) .....Secretary. .....President.

On the back of the certificate is usually printed a blank assignment, the form of which may be as follows:

For Value Received, I hereby sell, transfer and assign to ..... of the shares of capital stock within

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FORM 398

POWER OF ATTORNEY FOR TRANSFER STOCK

Know all Men by these Presents,

That .....

of ..... *in the State of* .....

do hereby irrevocably constitute and appoint .....

..... *of* ..... *in the State of* .....

to be ..... *true and lawful attorney for* ..... *and in* ..... *name and behalf, to sell, assign and transfer unto* .....

or any other person or persons, ...

Shares *in the* ..... **Capital Stock** *of the* .....

..... *standing in my name on the books of the* .....

..... *and for that purpose to make and execute all necessary acts of assignment and transfer* ..... *And further, one or more persons under* ..... *to substitute with like power.*

In Witness Whereof, ... *have hereunto set* ..... *hand* ..... *and seal* ..... *the* ..... *day of* ..... *19* ....

Sealed and Delivered in the Presence of

_____ | _____ (Seal)

mentioned, and authorize the Secretary to make the necessary transfer on the books of the Company.

Witness my hand this ..... day of ....., 19...

.....

Witnessed by:

.....

.....

FORM 399

IRREVOCABLE STOCK POWER OF ATTORNEY

Know all Men by these Presents, *That* .....

for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto .....

Shares of the ..... *STOCK of the* .....

standing in ..... *name* ..... *on the books of the* .....

and ..... *do hereby constitute and appoint the said* .....

true and lawful attorney, irrevocably, for ..... *and in* ..... *name* ..... *and stead, but to* ..... *own use and benefit, and at* ..... *own cost and charges, to take all lawful ways and means for the recovery and enjoyment thereof, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that* ..... *said attorney, or* ..... *substitute or substitutes, shall lawfully do by virtue hereof*

In Witness Whereof, ... *have hereunto set* ..... *hand* ..... *and seal* ..... *the* ..... *day of* ..... *19* ____

Sealed and Delivered in the Presence of

.....

..... Seal.

Form 400

Irrevocable Stock Power

IRREVOCABLE STOCK POWER.

Know All Men By These Presents

That _____

For Value Received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto _____

_____

Shares of the _____ STOCK of the _____

_____

standing in _____ name on the books of the said _____

represented by Certificate No. _____ herewith.

And _____ do hereby constitute and appoint _____

_____

_____ true and lawful Attorney, IRREVOCABLY, for _____ and in _____ name and stead but to _____ use, to sell, assign, transfer and make over, all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like full power, hereby ratifying and confirming all that _____ said Attorney or _____ substitute, or substitutes, shall lawfully do by virtue hereof.

In Witness Whereof, _____ have hereunto set _____ hand _____ and seal _____ at _____ the _____ day of _____, 19____

Signed, Sealed and Delivered in the presence of

_____ _____ {SEAL}

_____

XXVII

THE STOCK EXCHANGE

1. Kinds of Markets

The principal stock exchange in the United States is located in New York City, but other exchanges doing a considerable business are located in Chicago, Boston, Philadelphia, Baltimore, Cleveland, Pittsburgh, Cincinnati, San Francisco, St. Louis, Kansas City and Denver. The New York Stock Exchange is really a great national market on which issues of nationwide interest and importance are traded in. On the markets of other cities trading is chiefly in shares of local interest. In some instances stocks listed on the local stock exchange are listed also on the New York Stock Exchange, in which case the prices are usually determined primarily on the New York Stock Exchange.

Besides the regular organized markets, a large business is done, especially in bonds, in so-called over the counter trading. Banks and bond houses engage extensively in this kind of business. Bank and insurance stocks are sold extensively in this manner, and a considerable business of this kind is done in railroad, utility and industrial stocks.

Sometimes securities are sold at public auction. In New York, the regular weekly auction of stocks and bonds is held Wednesday afternoon at 14-16 Vesey Street.

2. New York Stock Exchange

In May, 1792, twenty-four brokers met in New York and pledged themselves "not to buy or sell from this day for any person whatsoever, any kind of public stock at a less rate than one quarter per cent commission on the specie value and that we will give a preference for each other in our

negotiations." In 1817 the brokers formed an organization and adopted a constitution and by-laws, and quarters were rented at approximately $100 a year. The constitution of the Exchange was revised in 1820. In 1835 rails took the lead among stocks traded in. The panic of 1857 witnessed wild speculation, as did the Civil War period.

Today the New York Stock Exchange is a voluntary organization of 1,100 members. It has a constitution and by-laws but no charter, although agitation to compel its incorporation has at times been rife.

The affairs of the Exchange are regulated by a number of committees. The government of the Exchange is in the hands of a Governing Committee, composed of the president, treasurer, and 40 members. The Governing Committee appoints 12 standing committees to which the various problems requiring consideration are submitted:

1. Admissions
2. Arbitration
3. Arrangements
4. Business Conduct
5. Constitution
6. Finance
7. Law
8. Odd Lots and Specialists
9. Publicity
10. Quotations and Commissions
11. Securities
12. Stock List

3. New York Curb Market

The New York Curb Market, after an out of doors career, housed itself at 78 Trinity Place. Severe criticism led to the formation of the New York Curb Association in 1910. Its organization resembles that of the New York Stock Exchange, having a Board of Governors consisting of 24 members, which selects a president, vice president, and treasurer. It has thirteen standing committees, as follows:

1. Finance
2. Commissions
3. Membership
4. Listing and Securities
5. Complaint
6. Arbitration
7. Law
8. Constitution
9. Arrangements
10. Insolvencies
11. Quotations
12. Clearing-House
13. Nominations

There are two classes of members, regular and associate, the regulars numbering 550 and the associates about the same. The latter are chiefly members of the New York Stock Exchange.

The Curb has several objects, one of the chief being the introduction of securities of companies in the process of formation and which will later be transferred to the New York Stock Exchange. It serves also as a regular market for securities not listed on other exchanges, as well as a temporary market for stock rights.

4. Listing

Formerly the New York Stock Exchange maintained an "unlisted" department for carrying securities of companies which refused to give sufficient information relative to their status to permit listing. Now all securities must be listed. To list its securities on the Exchange a company must conform to certain requirements. Detailed information must be submitted relative to the management and financial status of the issuing company. The company must also agree to support two agents in the Borough of Manhattan, City of New York, one to act as transfer agent, the other as registrar for listed securities. These duties are usually performed by trust companies, but the transfer agency may be a department or division of the issuing company, as in case of the Bethlehem Steel Corporation. A company cannot act as its own registrar.

The company which lists its securities must conform to specifications relative to engraving, etc. The Exchange makes detailed specifications in this respect. It is required that bonds recite conditions as to their issuance, tax exemption, terms of redemption, convertibility, default, interchangeability, or exchangeability of coupon and registered bonds, also convertible privileges; also payment of principal and interest in the Borough of Manhattan and provision for transfer and registration.

Certificates of stock must recite (1) ownership; (2)

par value; (3) whether shares are full paid; (4) non-assessable; (5) preference as to dividends; (6) distribution of assets upon dissolution or merger; (7) terms of redemption; (8) convertibility; (9) voting power; (10) other privileges; and (11) must bear the following legend: "This certificate is not valid until countersigned by the transfer agent, and registered by the registrar." It is required that certificates for less than $100 must bear the legend "Certificate for less than 100 shares."

There are yet other requirements, all intended to protect the security holder, as: that the company shall make certain reports to the stockholders as to its condition; that it shall notify the Stock Exchange of any changes in the authorized amounts of its listed securities, of the issuance of additional amounts of securities or of rights of any kind; also that it shall notify the exchange whenever it disposes of any integral asset or of its stock interest in any subsidiary or controlled company; and that it shall promptly notify stockholders and bondholders of any action taken relative to "interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange."

A company desiring to list its securities is supplied with (1) a stock distribution form, (2) a questionnaire, and (3) an eight or nine page letter size printed folder detailing the requirements. In addition to fulfilling the requirements set forth in these documents, the company must file other documents with the Committee on Stock List, as follows:

1. Three copies each of the charter and by-laws as amended to date, as well as of leases, easements, franchises and other arrangements.
2. One copy each of the resolutions of stockholders and directors and of authority for:
   (*a*) Authorizing issuance of stock
   (*b*) Authorizing issuance of stock on conversion of other securities
   (*c*) Directing specific reservations of authorized stock for conversion

(*d*) Authorizing, by name, officials to appear for listing securities

(*e*) Appointing transfer agent and registrar

Listing confers certain benefits on the company whose securities are listed, as follows:

1. A better market is obtained for its securities.
2. A certain amount of advertising value is obtained through the publicity accorded.

5. Committee on Stock List of N. Y. Stock Exchange

The following extract from Article X of the Constitution of the New York Stock Exchange explains the work of the Committee on Stock List:

A committee on Stock List, to consist of six members, which Committee shall have the following powers:

(*a*) To make rules prescribing the requirements for listing and such other rules and regulations in relation to the listing of securities as may be deemed expedient or necessary;

(*b*) To receive and consider all applications for placing securities on the list of the Exchange, and to make report and recommendation thereon to the Governing Committee. In its discretion to permit dealings on a "when issued" basis:

(1) in certificates of deposit or interim receipts for securities

(2) in securities of a corporation, the securities of which are already listed on the Exchange or

(3) in securities growing out of securities already listed;

but in every such case a full report shall be made to the Governing Committee at its next meeting;

(*c*) To place upon the List without report and recommendation to the Governing Committee obligations of the Government of the United States, or of any State, County or City thereof, and the external dollar bonds of a foreign government;

(*d*) On receipt of assurances satisfactory to the Committee that application conforming to the requirements will be made for the listing of the definitive securities, to place upon the List certificates of deposit or interim receipts for securities, or temporary securities of a corporation, securities of which are listed on the Exchange, and to direct that any such certificates of deposit, interim receipts or temporary securities be removed from the List and further dealing therein prohibited; report of such actions shall

be submitted to the Governing Committee at its next meeting thereafter;

(*e*) To direct that any security listed upon the Exchange be removed from the List and further dealing therein prohibited upon maturity of such security, or when it shall appear that the outstanding amount thereof has become so reduced as to make inadvisable further dealing therein upon the Exchange;

(*f*) To have charge of the arrangement and revision of the printed list of securities.

The following memorandum issued by the Committee on Stock List of the New York Stock Exchange sets forth its requirements as to listing of securities:

FORM 401

MEMORANDUM OF COMMITTEE ON STOCK LIST

July 1, 1925.

The Committee will meet Mondays at 3:15 p. m.

An application, *conforming to these requirements*, signed by an executive officer of the applying corporation, voting trustees, or depositary committees, and nine printed or typewritten copies must be filed with the Secretary of the Exchange at least five days prior to date set for consideration.

Applications must be accompanied by the required papers and agreements and by a check to be drawn to the order of "Treasurer, New York Stock Exchange" for a fee in accordance with the following schedule, such fee being computed separately for each class of security included in an application. In addition to such fees, companies making application are required to pay cost of printing. Printer's bills will be submitted directly to the applicant.

BASIC FEES

The basic fee for listing stock or securities arising out of stock, such as Certificates of Deposit for stock, Interim Certificates for Stock, Allotment Certificates for Stock, Voting Trust Certificates, etc., shall be, in the case of certificates having either no par value or a par value of $100 or less, one and two-tenths cents (1.2c) per share, any fraction of ten thousand (10,000) shares, over and above a multiple thereof, to be counted as ten thousand shares for this purpose. The basic fee for listing bonds, debentures, notes and similar instruments having a face value and not being issued

in denominations of less than $100 shall be one hundred and twenty dollars ($120.00) per million dollars ($1,000,000) face value or fraction thereof.

In any case, where a fee is to be charged, whether at the basic rate or at a modified rate, the minimum fee will be $120.00.

The full basic fee will be charged in all cases, unless otherwise herein stated.

MODIFICATIONS OF BASIC FEES

1. In cases where, after an initial listing, a change is involved between par and no par in either direction, or is in the amount of the par value of the security, or represents a greater or smaller number of shares of no-par stock involving the cessation of trading in no-par stock theretofore listed (as distinguished from a stock dividend in which the old stock continues to be traded in); the fee for such number of the substituted shares to be listed as is not in excess of the number of shares to be stricken from the list shall be one-fourth of the basic fee. For all shares, so issued, in excess of the number of shares to be stricken from the list, the full basic fee will be charged.

2. Where there is a change in the classication or name of a stock, without alteration of any preferences which it may bear, such as from Capital to Common, or vice versa, and without alteration in the number of shares, one-fourth of the basic fee will be charged. When, however, the change of name of a stock having a preference involves also the giving of a higher or lower preference to the stock, the full basic fee will be charged.

3. Where the change is in the nature of an extension of a time limit, as in the case of an extended voting trust, the number of shares listed not being increased, one-fourth of the basic fee will be charged.

4. Where the change is from *listed* stocks or bonds to Certificates of Deposit, whether or not a reorganization of the listed company is involved, one-fourth of the basic fee will be charged.

5. When the change is from Certificates of Deposit to stock or bonds:

(*a*) If such stock or bonds are identical with formerly listed securities, for which such certificates of deposit were issued, no fee will be charged up to the number of shares so formerly listed. For additional shares, the full basic fee will be charged.

(*b*) Where the certificates of deposit have been listed first and are thereafter replaced by the securities initially deposited, one-fourth of the basic fee will be charged for listing such securities.

(*c*) If such stock or bonds represent securities issued under a reorganization, or in any other respect differ from the securities for which such Certificates of Deposit were originally issued, the full basic fee will be charged, whether or not the securities were listed for which the Certificates of Deposit were originally issued.

6. Where voting trust or stock trust certificates are issued in exchange for listed stock of the same company, one-fourth the basic fee will be charged.

7. When voting trusts or stock trusts terminate and where the stock replacing them is identical with formerly listed stock for which such voting or stock certificates were issued, there will be no fee up to the number of shares so formerly listed. For additional shares, the full basic fee will be charged. If, however, the stock replacing such certificates was not formerly listed, one-fourth the basic fee will be charged.

8. Where the name of a corporation is changed, without reorganization, merger or other change in its corporate structure, the fee will be one-fourth of the basic fee. If, however, a reorganization or merger resulting in a new corporation is involved, the full basic fee will be charged. When the corporation changing its name simultaneously acquires the stock or property of another corporation, only the additional stock issued therefor, together with any additional number of shares otherwise issued, is subject to the full basic fee.

9. In the case of a stock dividend, the additional stock issued is subject to the full basic fee. There is no additional fee as to the old stock.

An application for listing Governmental, State, County, or Municipal securities must be signed by a properly accredited official or by financial representatives, and be accompanied by required check, as above, and papers.

Specimen application furnished on request.

THE EMPLOYEES OF THE COMMITTEE ON STOCK LIST ARE INSTRUCTED TO ASSIST IN THE PREPARATION OF APPLICATIONS TO LIST WHENEVER SO REQUESTED. NO CHARGE WILL BE MADE FOR SUCH SERVICE.

Requirements for Original Listing

STOCK

For form of certificates eligible to be listed under this classification, and list of papers to be furnished, see pages 1046-1055.

Every application for an original listing of capital stock shall recite:

A Where incorporated.

B (1) Amount applied for (whether temporary or permanent certificates); (2) authorized issue.

C (1) Date of charter; (2) duration.

D (1) Business; (2) special rights or privileges under charter or by-laws.

E (1) Whether capital stock is full paid; (2) non-assessable; and (3) whether liability attaches to shareholders.

F (1) Issues (by classes), dividend rate and par value; (2) total amount of each, authorized and issued; (3) increases and authority therefor, including (*a*) action by stockholders, (*b*) by directors and (*c*) by public authorities, etc.; (4) amount unissued, (*a*) options or contracts on same, (*b*) specific reservation for conversion.

G If preferred stock; (1) whether cumulative or non-cumulative; (2) preferences, including (*a*) voting power; (*b*) dividends; (*c*) distribution of assets on dissolution or merger; (*d*) redemption; (*e*) convertability; (*f*) special provisions.

H Voting power of obligations of debt.

I (1) Purpose of issue; (2) application of proceeds; (3) amount issued for securities, contracts, property; description and disposition; (4) additional property to be acquired, with particulars, as required by paragraph *N*.

J (1) History of corporation; (2) of predecessor companies or firms, with location and stock issues (by classes); (*b*) conditions leading to new organization.

K Tabulated list of constituent, subsidiary, owned or controlled companies, showing (*a*) date of organization; (*b*) where incorporated; (*c*) duration of charter; (*d*) business and (*e*) capital stock issues (by classes), par value, amount authorized, issued, owned by parent company.

L (1) Mortgage, and (2) other indebtedness, showing (*a*) date, (*b*) maturity, (*c*) interest rate, (*d*) convertability, (*e*) redemption by sinking fund or otherwise, (*f*) amount authorized, and (*g*) amount issued; (3) similar information regarding mortgage and other indebtedness of constituent, subsidiary, owned, or controlled companies.

M Other liabilities, joint and several, (1) guaranties, (2) leases, (3) traffic agreements, (4) trackage agreements, (5) rentals, (6) car trusts, etc., (7) terms of each, and provision for payment; (8) similar description of other agreements or easements; (9) similar information as to constituent, subsidiary, owned or controlled companies.

N (1) Description, location, nature and acreage of property,

(*a*) owned in fee; (*b*) controlled; (*c*) leased; (2) railroads, mileage completed, operated and contemplated; (3) equipment; (4) character of building and construction; (5) tabulated list of franchises, showing (*a*) where granted, (*b*) date, (*c*) duration, (*d*) purpose; (6) timber, fuel or mining lands, water rights; (7) similar information as to constituent, subsidiary, owned or controlled companies.

O Policy as to depreciation.

P (1) Character and amount of annual output for preceding five years; (2) estimated output (character and amount) for current year; (3) number of employees.

Q (1) Dividends paid or declared; (2) by predecessor, and constituent, subsidiary, owned or controlled companies.

R Financial statements; (1) earnings for preceding five years, if available with interest charges, depreciation and federal taxes; (2) income and surplus account of recent date for at least two years, if available; (3) balance sheets of same dates; (4) balance sheet giving effect to recent financing, if any; (5) similar accountings for predecessor, constituent, subsidiary, owned or controlled companies; (6) corporation consolidated within one year previous to date of application, income and surplus account and balance sheet of all companies merged and balance sheet of applying corporation; (7) if in hands of receiver within one year previous to date of application, (*a*) income account and balance sheet of receiver at time of discharge if available, (*b*) balance sheet at close of receivership if available, and (*c*) balance sheet at date of reorganization.

S Agreements contained on pages 1049-1051.

T Fiscal year.

U Place and date of annual meeting.

V Location of principal and other offices.

W Names of (1) directors, classified, with addresses; (2) officers; (3) transfer agents, with addresses, (4) registrars, with addresses.

In addition to the above, applications from corporations which own or operate mines must recite:

A Patented and unpatented claims, by numbers.

B (1) Geological description of country; (2) location and description of mineral and other lands; (3) ore bodies; (4) average value of ore; (5) character and analysis; and (6) methods of treatment.

C History of workings, (1) results obtained; (2) production each year.

D (1) Ore reserves compared with previous years, showing

separately as to character and metal content; (2) estimate of engineer as to probable life of mines; (3) probabilities by further exploration.

E (1) Provisions for smelting and concentration; (2) proximity of property to railway or other common carrier.

F Properties in process of development; income account if available; guarantees for working capital and for completion of development in event income account not available.

G Total expenditures for preceding five years for acquisition of new property, development, proportion charged to operations each year.

H (1) Policy as to depletion; (2) acquisition of new property; (3) new construction and development.

I Production by tons, number of tons of ore treated, average assay yield, percentage of extraction, recovery per ton of ore, for preceding five years, if available.

In addition to the above, applications from corporations which own or operate oil and gas wells must recite:

A (1) Brief history of oil field; (2) geological description of country; (3) character and gravity of oil.

B (1) Total area of oil land (developed and undeveloped), (*a*) owned, (*b*) leased, (*c*) controlled, (*d*) proven, (*e*) under exploitation, (*f*) royalties.

C (1) Number of wells (oil or gas) on each property, (*a*) in operation, (*b*) drilling, (*c*) contemplated, (2) average depth of wells drilled, (*a*) shallowest, (*b*) deepest, (*c*) probable life; (3) whether oil sands are dipping.

D (1) Gross daily production—initial and present; (2) annual gross production from each property for preceding five years, if available; (3) estimated gross production for current year.

E (1) Storage, capacity and location; (2) (*a*) amount of oil stored, (*b*) character, (*c*) value, (3) pipe line, (*a*) gauge, (*b*) capacity, (*c*) mileage.

F (1) Refineries, (*a*) capacity, (*b*) acreage, (*c*) employees, (*d*) products and by-products.

G Properties in process of development; income account if available; guaranties for working capital and for completion of development in event income account not available.

H Total expenditures for preceding five years for acquisition of new property, well drilling and development, proportion charged to operations each year.

I (1) Policy as to depletion; (2) acquisition; and (3) development of new properties.

(Note: For requirements as to voting trust or stock trust certificates of deposit, see page 1045.)

BONDS

For form of securities eligible to be listed under this classification, and for list of papers to be furnished, see pages 1046-1055.

An application for an original listing of bonds shall recite all information required for listing stock, *and*

A (1) Full title; (2) amount applied for (whether temporary or permanent), denominations and numbers; (3) amount authorized and outstanding, authority therefor, including (*a*) action by stockholders, (*b*) directors, and (*c*) public authorities, etc.; (4) whether bonds are coupon (registerable as to principal) or registered, interchangeable or exchangeable; (5) exchangeability or convertibility into other securities, and terms.

B Names and addresses of trustees.

C (1) Date of issue and maturity; (2) interest rate; (3) places at, and dates for payment of interest and principal; (4) where registerable or transferable; (5) kind and standard of money, and options; (6) tax exemptions; (7) whether redeemable or purchasable in whole or part by sinking fund or otherwise, showing (*a*) dates, (*b*) price, (*c*) duration and place of published notice; (8) specified reservation of stock for conversion.

D Provisions for declaration of principal due and payable in event of default of payment or interest, or other defaults, and waiver; percentage of outstanding bonds controlling trustee.

E Purpose of issue and application of proceeds, similar to that called for by Paragraph *I* of the Requirements for Listing Stock; provisions as to additional issue.

F Disposition of bonds refunded, redeemed or purchased for sinking fund, and mortgage securing same.

G Mortgage or indenture provisions for (1) serial issues; (2) values in United States gold coin; (3) issuance in foreign languages and (4) that the English version governs; (5) terms of exchangeability of bonds payable in foreign places for bonds payable in United States or vice versa.

H (1) Security—Mortgage, indenture of trust, or other agreement; and (2) liens, (*a*) properties covered, (*b*) mileage of railway lines, (*c*) buildings, (*d*) equipment, (*e*) securities, (*f*) rights, (*g*) privileges, (*h*) titles, (*i*) franchises, (*j*) leases, etc.; (3) other liens covering same or any part of same properties (4) guaranty and terms.

I Any unusual provisions or covenants contained in mortgage, or deed of trust.

REQUIREMENTS FOR LISTING OF ADDITIONAL AMOUNTS

For list of papers to be furnished, see pages 1046-1048.

Refer to previous applications and last application by number and date, and recite:

A Where incorporated.

B (1) Amount applied for; (2) amounts authorized and outstanding; (3) authority for issue, including (*a*) action by stockholders, (*b*) by directors, and (*c*) by public authorities, etc.; (4) total amount applied for.

C (1) Purposes of issue; (2) application of proceeds; (3) amount, description and disposition of securities exchanged for new issues; (4) additional property acquired or to be acquired, with particulars as required in Paragraph *N* on page —.

D Dividends paid and declared since previous application.

E Changes, if any, in (1) charter; (2) by-laws; or (3) capitalization since previous application.

F Changes in property, if any, since previous application.

G (1) Character and amount of output since previous application or earnings as in application for original listing; (2) estimated output (character and amount) for current year; (3) number of employees.

H Income account, surplus account and balance sheet of recent date, also for constituent, subsidiary, owner or controlled companies, or a consolidated income account, consolidated surplus account and a consolidated balance sheet.

I Policy as to depreciation and depletion.

J Fiscal year, place and date of annual meeting, location of offices, and names of officials as covered by Paragraphs *T*, *U*, *V* and *W* on page —.

(*Note: "When a corporation purposes to increase its authorized capital stock, thirty days' notice of such proposed increase must be officially given to the Exchange before such increase may be admitted to dealings."*)

(*Note: "When capital stock of a corporation is increased through conversion of convertible bonds already listed, the issuing corporation shall give immediate notice to the Exchange and the Committee on Stock List may, thereupon, authorize the registration of such shares and add them to the list."*)

REQUIREMENTS FOR LISTING OF CERTIFICATES OF DEPOSIT, VOTING TRUST OR STOCK TRUST CERTIFICATES, ETC.

For form of certificates eligible to be listed under this classification, and for list of papers to be furnished, see pages 1046-1055.

Every application for the listing of certificates of deposit, voting trust or stock trust certificates, etc., shall recite:

A (1) Name of applicant; (2) amount applied for (whether temporary or permanent certificates); (3) depositary; (4) security deposited, and whether listed; (5) registrar.

B (1) Date of agreement; (2) names of committee, or voting trustees; (3) terms of trust; (4) powers and duties of committee, trustees, or depositary.

C Reasons for deposit.

D (1) Duration of trust or deposit; (2) extensions or limitations; (3) final date of deposits; (4) provisions for deposits without penalty for approximately thirty days after listing, or if no time limit for deposit of securities without penalty is fixed, an agreement that approximately thirty days' notice of such limitation of time shall be published and given to the Stock Exchange; (5) date of presentation of plan; (6) provisions for dissent and withdrawal; (7) percentage necessary to adoption; (8) pro rata, charges; (9) provisions for return of securities (or equivalent); (10) provision for payment of interest dividends, etc.

E Applications to list Voting Trust or Stock Trust Certificates to recite financial statements of company as in Paragraph *R* on page —.

F Agreement to deliver definitive securities at termination of Voting Trust or Voting Trust to be extended.

G Agreement to have definitive securities listed.

H Agreement by Voting Trustees to have company publish its financial statements.

I Agreements contained on pages 1049-1050.

(*Note: Applications to list voting trust or stock trust certificates and certificates of deposit for securities not a delivery on the Stock Exchange must, in addition, comply with the Requirements.*)

Applications for each class of deposited securities shall be separate and certificates issued of distinctive colors.

PAPERS TO BE FILED WITH APPLICATIONS

In addition to application for listing, the following papers must be filed:

For Stocks:

1 Three copies of charter, with amendments to date, one copy attested by proper public authority.

2 Three copies of by-laws, with amendments to date, one copy attested by an executive officer of corporation.

3 Three copies of leases, franchises, easements and special

agreements, one copy of each attested by an executive officer of corporation.

4 One copy of resolutions of stockholders and directors and copy of proper public authority authorizing issue, each attested by an executive officer or corporation.

5 One copy of resolutions of stockholders or directors, and copy of proper public authority, authorizing issue of stock on conversion or other securities, attested by an executive officer of corporation.

6 One copy of resolutions of stockholders or directors directing specific reservation of authorized stock for conversion, attested by an executive officer of corporation.

7 One copy of resolutions of stockholders, board of directors, or executive committee attested by an executive officer of corporation, authorizing, by name, official to appear for listing securities (form may be had on application).

8 Opinion of counsel (not an officer or director of the corporation) as to legality of (*a*) organization (*b*) authorization (*c*) issue, and (*d*) validity of securities. *The Committee will not accept the opinion of an officer or director of an applying corporation nor of a firm in which the officer or director is a member, as counsel on any legal question affecting the corporation; nor will it accept the opinion of an officer or director of a guarantor corporation nor of a firm in which the officer or director is a member, on any legal question affecting the issuance of guaranteed securities.*

9 Six copies of detailed distribution of securities, one certified (form may be had on application).

10 One copy of resolution appointing transfer agent and registrar, attested by an executive officer of corporation.

11 Certificate of registrar of amount of securities registered at date of application.

12 Report of qualified engineer covering actual physical condition of property at recent date.

13 Map of property and contemplated extensions.

14 Specimens of all securities to be listed.

15 Questionnaire (form may be had on application).

16 Certified copy of income accounts, surplus accounts and balance sheets contained in application.

17 Agreements.

18 Certified copy of printed circular issued by Bankers describing security, if available.

For Bonds:

19 All papers required for listing stocks and also ten copies of

the mortgage or indenture, one copy (*a*) certified to by trustee, (*b*) with copies of all certificates of proper recording.

20 Trustees' certificate required on page 1050.

21 One copy of resolutions of stockholders or directors, and copy of proper public authority, authorizing issue of stock on conversion of bonds, attested by an executive officer of corporation.

22 One copy of resolution of stockholders or directors directing specific reservation of authorized stock for conversion, attested by an executive officer of corporation.

23 Certificates of disposition of securities redeemed or refunded.

24 Certificate as to collateral deposited.

25 Certified copy of release or satisfaction of underlying mortgages.

For securities of Reorganized Corporations:

1 All papers required for listing stocks and bonds. *Opinion of counsel shall state that proceedings have been in conformity with legal requirements, that title to property is vested in new corporation and is free and clear from all liens and incumbrances, except as distinctly specified; and also as to equities of securities of predecessor corporation.*

2 Certified order of court confirming sale on foreclosure or other authority for reoganization.

3 Certified copy of plan of reorganization.

4 Certified income and surplus account and balance sheet at close of receivership, if available.

5 Certified balance sheet at date of reorganization.

For additional amounts:

1 Nos. 4, 5, 6, 7, 8, 9, 11, 15, 16, 17, 18 of papers required for original listings.

2 Nos. 1, 2, 3, 10, 12, 14 of said papers for stock, *if any changes have occurred therein since previous application.*

3 Nos. 1, 2, 3, 12, 14, 20, 21, 22, 23, 24, 25 of said papers for bonds, *if any changes have occurred therein since previous application.*

4 Certified copy of proper public authority for increase.

For Certificates of Deposit, Voting Trust, etc.:

1. Papers required for listing stocks and bonds.

2 Certified copies of any legal proceedings and court orders.

3 Three copies of deposit or trust agreement, one certified to by proper authority.

4 Three copies of circulars, issued by trustees or committee, one certified to by proper authority.

5 Certificates of amounts deposited.

AGREEMENTS

To be made part of applications where applicable:

1 Not to dispose of an integral asset or its stock interest in any constituent, subsidiary, owned or controlled company, or allow any of said constituent, subsidiary, owned or controlled companies to dispose of an integral asset or stock interest in other companies, unless for retirement and cancellation, without notice to the Stock Exchange.

2 To publish once in each year and submit to the stockholders, at least fifteen days in advance of the annual meeting of the corporation, a statement of its financial condition, a consolidated income account covering the previous fiscal year and a consolidated balance sheet showing assets and liabilities at the end of the year; or an income account and balance sheet of the parent company and of all constituent, subsidiary, owned or controlled companies.

3 To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, other than its transfer office or agency in said city, where all listed securities shall be registered.

4 To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities.

5 Not to make any change in listed securities, of a transfer agency or of a registrar of its stock, or of a trustee of its bonds or other securities, without the approval of the Committee on Stock List, and not to select as a trustee an officer or director of the company.

6 To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, so as to afford the holders of its securities a proper period within which to record their interests, and that all rights to subscribe or to receive allotments and all other such rights and benefits shall be transferable; and shall be transferable, payable and deliverable in the Borough of Manhattan, City of New York.

7 To notify the Stock Exchange of the issuance of additional amounts of listed securities, and make immediate application for the listing thereof.

8 To publish promptly to holders of bonds and stocks any action in respect to interest on bonds, dividends on shares, or allotment of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books or extensions, or the taking of a record of holders for any purpose.

9 To redeem Preferred Stock in accordance with the requirements.

10 To notify the Stock Exchange if deposited collateral is changed or removed.

11 To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

The Committee recommends a date be fixed as record for dividends, allotment of rights and stockholders' meetings, without closing the transfer books.

Notice of rights, allotments, subscription privileges, to bondholders and shareholders, should be as of a date after authorization.

TRUSTEES OF MORTGAGES

The Committee recommends that a trust company or other financial corporation be appointed trustee of mortgages, indentures, and deeds of trust; and when a State law requires the appointment of an individual as trustee, a trust company or other financial corporation be appointed as co-trustee.

Each mortgage, indenture, or deed of trust should be represented by a separate trustee.

The Committee will not accept as trustee:

(*a*) An officer or director of the issuing corporation;

(*b*) A corporation in which an officer of the issuing corporation is an executive officer.

The trustee shall present a certificate accepting the trust and certifying (1) securities are issued under the terms of the mortgage or indenture, giving the numbers, denominations and amount authenticated; (2) collateral deposited; (3) disposition of prior obligations. For additional issues of bonds, the trustee must certify that (1) increase is in conformity with terms of mortgage or indenture, giving numbers, denominations and amount authenticated; (2) additional collateral deposited; and (3) disposition of prior obligations.

The company and trustee shall notify the Stock Exchange of the holding, cancellation, or retirement of securities, by redemption, through the operation of sinking fund or otherwise.

The trustee must notify the Stock Exchange if deposited col-

lateral is changed or removed, and furnish a list of collateral substituted.

A change of trustee shall not be made without the approval of the Committee.

TRANSFER AND REGISTRY

Every corporation whose securities are listed upon the Stock Exchange must, in accordance with the rules of the Exchange, maintain (*a*) a transfer office and (*b*) a registry office, both in the Borough of Manhattan, City of New York. The transfer agency and registrar *shall not be identical,* and both must be acceptable to the Committee. A company cannot act as registrar of its own stock.

Where a stock is transferred at the company's office, the transfer agent or transfer clerk shall be appointed by specific authority of the board of directors to *countersign* certificates, in said capacity, and shall be other than an officer who is authorized to sign certificates of stock.

The entire amount of the capital stock of a corporation listed upon the Stock Exchange *must be directly transferable* at the transfer office of the corporation in the Borough of Manhattan, City of New York. When a corporation makes transfer of its shares in other cities, certificates shall be interchangeably transferable and *identical in color and form,* except as to names of transfer agent and registrar; and the combined amounts of stocks registered in all cities shall not exceed the amount authorized to be listed.

Interchangeable certificates must bear a legend reciting the right of transfer in New York and other cities.

The registrar must file with the Secretary of the Stock Exchange an agreement to comply with the requirements in regard to registration and *not to register any listed stock, or any increase thereof, until authorized by the Committee.*

Certifications of transfer and registry must be dated and signed by an authorized officer of the transfer agent and registrar, respectively.

A change in the form of a security, of a transfer agency, or of a registrar, shall not be made without the approval of the Committee.

FORMS OF CERTIFICATES, ENGRAVING, ETC.

General Requirements

(See Specific Requirements below.)

All securities for which listing upon the Exchange is requested, except as otherwise herein stated, must be engraved and printed

in a manner satisfactory to the Committee from at least two steel plates by an engraving company whose work the Committee is authorized by the Governing Committee to pass upon; the name of the engraving company must appear upon the face of all securities and also upon the face of coupons and the title panel of each bond. Securities must bear a vignette upon their face.

Said plates shall be: (1) *A border and tint plate* from which should be made a printing in color underlying important portions of the face printing; (2) *A face plate* containing the vignettes and descriptive or promissory portion of the document, which should be printed in black or in black mixed with a color. The combined effect of the impression from these plates must be as effectual security as possible against counterfeiting.

The printing of securities must be in distinctive colors, to make classes and denominations readily distinguishable.

All certificates, except as otherwise stated herein, must provide for transfer and for registration with dates. When a corporation makes transfers of its shares in other cities, certificates shall be identical in color and form, except as to names of transfer agent and registrar; certificates interchangeably transferable must bear a legend reciting the right of transfer in New York and other cities.

The Committee recommends that the text of securities shall provide for transfer in person or by duly authorized attorney upon surrender of the security properly endorsed.

A change in the form of a security, transfer agency, registrar, or trustee of bonds, shall not be made without the approval of the Committee.

The Committee will object to any security upon which an impress is made by a hand stamp, except for a date or power of substitution.

BONDS

(In addition to the General Requirements above outlined, the following apply specifically to bonds.)

All bonds must be fully engraved and printed in a manner satisfactory to the Committee; face of bonds and coupons must bear a vignette.

The text of bonds should recite conditions of issuance, tax exemption, terms of redemption (by sinking fund or otherwise), convertibility, default, interchangeability or exchangeability of coupon and registered bonds, and conversion into other securities.

Bonds, in the text and on the reverse, must recite payment of principal and interest in the Borough of Manhattan, City of New York, and provide for transfer and registration. Coupons must

recite payment of interest in the Borough of Manhattan, City of New York and tax exemption.

Registered bonds must carry a power of assignment in such form as the Committee may approve.

The Committee recommends that registered bonds be made interchangeable with coupon bonds.

Registered bonds interchangeable with coupon bonds shall bear a legend reciting numbers and denominations of coupon bonds, against which they are issued.

If coupon bonds of any denomination are interchangeable with coupon bonds of other denominations they shall contain such recital in the text and bear an appropriate legend on the reserve.

Registered bonds made such by detaching coupon sheets are not eligible for listing.

FORMS OF LEGENDS FOR BONDS

For coupon bonds of one denomination interchangeable with coupon bonds of other denominations:

"As provided in the Indenture, coupon bonds of the denominations of $1,000, $500 or $100, at any time outstanding, when surrendered with all unmatured coupons attached and upon the payment of charges, may be exchanged for an equal aggregate principal amount of coupon bonds of any other denomination of the same issue, of numbers not contemporaneously outstanding, with all unmatured coupons attached."

For a coupon bond of a thousand dollars exchangeable for coupon bonds of smaller denominations:

"The holder of this bond may, at his option, on surrender and cancellation and on payment of charges, as provided in the indenture, receive in exchange coupon bonds of this issue for an amount aggregating $1,000 in denominations of $..... of numbers not contemporaneously outstanding."

For coupon bonds of smaller denominations exchangeable for a $500 or a $1,000 coupon bond:

"The holder of this bond may, at his option, on surrender and cancellation of this bond and others of the same issue aggregating $500 or $1,000 and on payment of charges, as provided in the indenture, receive in exchange a coupon bond of this issue of a number not contemporaneously outstanding, for the amount aggregated."

For registered bond(s) issued for coupon bond(s) of denomination(s) of less than $1,000:

"This bond is issued in exchange for coupon bond(s) of this issue numbered ..... in denominations of $..... not contemporaneously outstanding, aggregat-

ing the face value hereof and coupon bond(s) of this issue bearing the said number(s) and of the same denomination(s) will be issued in exchange for this bond upon surrender, cancellation and payment of charges provided in the indenture."

For registered bond(s) issued for $1,000 coupon bond(s):

"This bond is issued in exchange for coupon bond(s) of this issue numbered ..... for $1,000 (each), not contemporaneously outstanding, and coupon bond(s) of this issue bearing the said number(s) will be issued in exchange for this bond upon surrender, cancellation and payment of charges provided in the indenture."

STOCK

(In addition to the above General Requirements, the following apply specifically to stock certificates.)

The border and tint plate for one-hundred share certificates of stock shall have *said denomination engraved thereon in words and figures; the plates for smaller amounts shall bear some engraved device whereby the exact denomination of the certificate may be distinctly designated by perforation;* also conspicuously upon the face *"Certificate for less than one hundred shares."*

Certificates for every class of stock shall recite preferences of all classes.

Certificates of stock shall recite (1) ownership; (2) par value; (3) whether shares are *full* paid and (4) non-assessable; (5) preference as to dividends; (6) distribution of assets upon dissolution or merger; (7) terms of redemption; (8) convertibility; (9) voting power, or (10) other privilege; and (11) must bear the following legend:

This certificate is not valid until countersigned by the transfer agent, and registered by the registrar.

The following form is required upon the reverse of a certificate of stock:

For value received.....hereby sell, assign and transfer unto .....
..... shares of the *capital stock represented by the within certificate and do hereby irrevocably constitute and appoint
..... attorney to transfer the said stock on the books of the within named company with full power of substitution in the premises.

Dated..... 19.....

.....

In presence of

.....

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement, or any change whatever.

*On certificates without nominal or par value the word "capital" may be omitted.

CERTIFICATES OF DEPOSIT, VOTING TRUST CERTIFICATES, ETC.

In addition to the General Requirements above outlined, certificates of deposit and voting trust certificates must conform in every particular to the Specific Requirements as to stock certificates, except that the descriptive portion of a certificate of deposit may be typed satisfactorily to the Committee.

TEMPORARY CERTIFICATES OR RECEIPTS

Temporary certificates or receipts must conform to the General Requirements above outlined and to the Specific Requirements as to stock certificates, except that the text may be typed satisfactorily to the Committee, and need not bear a vignette.

REMOVALS OR SUSPENSIONS IN DEALINGS OF LISTED SECURITIES

Whenever it shall appear that the outstanding amount of any security listed upon the Stock Exchange has become so reduced as to make inadvisable further dealings therein, the Committee may direct that such security be removed from the list and further dealings therein prohibited.

"The Governing Committee may suspend dealings in the securities of any corporation previously admitted to quotation upon the Exchange, or it may summarily remove any securities from the list."

E. V. D. Cox, *Secretary* ROBERT GIBSON, *Chairman*

The following rules relative to delivery of securities have been adopted by the Committee on Securities of the New York Stock Exchange.

FORM 402

RULES FOR DELIVERY OF COMMITTEE ON SECURITIES

1. Securities admitted to dealings upon the New York Stock Exchange Registered and Transferable in the Borough of Manhattan, City of New York, in conformity with the requirements of the Constitution, are a delivery:

(*a*) Certificates of Stock for 100 shares or odd lots aggregating 100 shares, with irrevocable Assignment for each Certificate, and in the name of a member or a member's firm. Certificates for the exact amount or aggregating the amount of an odd lot.

(*b*) Or with irrevocable Assignment witnessed by a member, or correctness of signature guaranteed by a member or a member's firm.

(*c*) Or with irrevocable Assignment and each Power of Substitution witnessed by a member or correctness of signature guaranteed by a member or a member's firm.

(*d*) Coupon Bonds payable to Bearer, in denominations of $500 or $1,000 each, with proper coupons of the bond's number securely attached. Small bonds, under $500, or large bonds over $1,000, only in special transactions, except that in transactions in United States Liberty Loan coupon bonds, denominations of $5,000 and $10,000 when such pieces are exchangeable for $1,000 or $500 denomination, may be delivered.

The money value of a missing coupon may be substituted only with the consent of the Committee on Securities for each delivery.

Coupon Bonds exchangeable into Registered Bonds and Convertible Bonds must carry all unpaid and unmatured Coupons.

(*e*) Registerable Coupon Bonds in denominations of $500 or $1,000, registered to Bearer, or when transfer books are closed with an Assignment to Bearer for each bond by a member or his firm or witnessed by a member, or the correctness of the signature guaranteed by a member or his firm. Provided, however, that when coupon bonds may be "registered for voting purposes only" and such registration does not affect the negotiability of the bonds, such bonds may be delivered with such registration thereon.

(*f*) Registered Bonds in denominations of not less than $500 and not exceeding $10,000 properly assigned.

(*g*) A security with an Assignment, or Power of Substitution, executed, witnessed, or guaranteed by a non-resident member or firm must be stamped by the resident member or firm first delivering it as follows:

"Delivered by . . . ." (name of resident member or firm).

2. Securities contracted for in amounts exceeding 100 shares of Stock or $1,000 in Bonds, may be tendered in lots of 100 shares of Stock or $1,000 in Bonds, or any multiple of either, and must be accepted and paid for as delivered, except that in the case of Bonds sold "Delayed Delivery," the full lot must be tendered, unless otherwise mutually agreed.

3. Securities with Assignment, or power of Substitution, signed by an Insolvent, are not a delivery. During the close of transfer books, such securities held by others, than the insolvent, are a delivery if accompanied by an affidavit for each certificate or bond,

that said securities were held on a date prior to the insolvency.

Securities with Assignment or with Power of Substitution, guaranteed by a member or his firm, suspended for Insolvency, are not a delivery and must be reguaranteed by a solvent member or his firm.

4. Securities with an Assignment or a Power of Substitution executed by a firm that has ceased to exist are not a delivery, except during the closing of the transfer books. The assignment must be proved or acknowledged before a Notary Public. (Form No. 3, and for witness No. 9.)

Securities with either the Assignment or any Power of Substitution witnessed by a deceased person are not a delivery.

5. Securities assigned, or a Power of Substitution by a firm that has dissolved and is succeeded by one of the same name, are a delivery, when the new firm shall have signed the statement "Execution guaranteed," under a date subsequent to the formation of the new firm.

6. Securities in the name of a corporation or an institution, or in a name with official designation, are a delivery only when the statement "*Proper papers for transfer filed by assignor*" is placed on each assignment and signed by the Transfer Agent.

7. Securities with an Assignment or a Power of Substitution signed by a deceased person, Trustees, Guardians, Infants, Executors, Administrators, Assignees and Receivers in Bankruptcy, Agents or Attorneys are not a delivery.

8. Securities assigned by a *Married Woman* are not a delivery. A joint assignment and acknowledgment by husband and wife before a Notary Public, will make such security a delivery only *while the transfer books are closed.* (Form No. 4.)

9. Securities in the name of an *Unmarried Woman,* with the prefix "Miss," are a delivery without notarial acknowledgment, when signed "Miss."

10. Securities in the name of an *Unmarried Woman* (without the prefix "Miss",) or a *Widow* are a delivery only when the Assignment is acknowledged before a Notary Public. (Form No. 5.)

11. Securities of a Company whose transfer books are closed indefinitely for any reason, legal or otherwise, the Assignment and each Power of Substitution must be acknowledged before a Notary Public. (Forms Nos. 2, 3, for witness, 8 and 9.)

12. Securities in the name of Foreign Residents are not a delivery on the day the transfer books are closed for payment of a Dividend or Registered interest, *and reclamation can only be made on that day.*

13. Securities in the name of Foreign Residents must be accompanied by an acknowledgment before a United States Consul or Morgan, Grenfell & Co., London, when required by transfer agents.

Several companies having transfer offices at Grand Central Station, New York, make this requirement.

14. Certificate of stock on which the name of a transferee has been filled in error, may be made a delivery during the closing of the transfer books by ruling of the Committee on Securities. Necessary form of release, cancellation and reassignment will be furnished on application to the Committee on Securities.

15. An endorsement by a member or his firm of (or the signature as a witness by such a member of a signature to) an Assignment or a Power of Substitution, is a guarantee of its correctness. Each Power of Substitution, as well as the Assignment, must be so guaranteed, or witnessed.

16. The receiver of stock may demand delivery by transfer when the transfer books are open and must give ample time in which to make transfer. The party making delivery may demand payment for the same at the time of delivery to the transfer office. Any expense imposed by a Transfer Agent must be defrayed by the receiver.

17. When a claim is made for a dividend on Stock after the transfer books have been closed, the party in whose name the stock stands may require from the claimant presentation of the certificate, a written statement that he was the holder of the Stock at the time of the closing of the books, a guarantee against any future demand for the same and the privilege to record on the certificate evidence of the payment by Cash or Due Bill.

18. *"Coupon Bonds issued to Bearer, having an endorsement upon them not properly pertaining to them as a security, must be sold specifically as 'Endorsed Bonds,' and are not a delivery, except as 'Endorsed Bonds'."*

Extract from Resolutions of Governing Committee, adopted May 23, 1883.

A definite name of a person, firm, corporation, an association, etc., such as "John Smith," "Brown, Jones & Co.," "Consolidated Bank," appearing upon a Coupon Bond, and not placed there for any purpose of the Company by any of its officers, implies ownership and is an "Endorsed Bond" under the above resolution.

19. Any endorsement on a Coupon Bond, stating that it has been deposited with a State for bank circulation or insurance requirement, may be released and release acknowledged before a Notary Public; it will then be a delivery as a "Released Endorsed Bond."

"RIGHTS" TO SUBSCRIBE

20. Assignments of "Rights," with the signature of the assignor, witnessed and guaranteed in the same manner as other Assignments, as provided in these rules, are a delivery:

(*a*) An Assignment of the "Rights" accruing on each 100 shares, or, Assignments of "Rights" on odd lots aggregating the "Rights" on 100 shares.

(*b*) An Assignment for the exact amount, or Assignments aggregating the amount, on a sale of the "Rights" accruing on an odd lot of stock.

21. Assignments of "Rights" in the name of a *Married Woman, Widow* or an *Unmarried Woman* are a delivery without notarial acknowledgment.

22. Assignments of "Rights" made by a deceased person or a firm that has ceased to exist are not a delivery, and must be taken back by the party delivering them.

23. Assignments of "Rights" signed by Trustees, etc., or for corporations, etc., are not a delivery, until passed by the Committee on Securities.

24. "Rights" may be dealt in after a day to be fixed by the Committee on Securities. Warrants for Rights are deliverable upon a subsequent day to be fixed by the Committee, after said day all dealings shall be as in other securities.

25. Due Bills for "Rights" accompanying stock which, by ruling of the Committee on Securities, does *not sell* "Ex Rights" at the closing of the books, must be redeemed on a day fixed by the Committee on Securities.

26. Contracts in Warrants for "Rights" may be enforced "under the rule."

Reference is made to the Constitution for method of settlement of contracts carrying "Rights" other than those covered by 24 and 25 of these Rules, and also for Rights accruing during the pendency of a contract.

RECLAMATIONS

27. Reclamation for irregularity in a security, when such irregularity affects only its currency in the market, must be made within ten days from day of delivery of the security. A security with an irregularity having been delivered may be returned up to 2:15 o'clock p. m. to the party who delivered it, who must immediately give the party presenting it either the security in proper form for delivery, or pay the market price of the security, and assume all liability for non-delivery. In the latter case, the security in proper

form may be delivered to the claimant before 2:15 p. m., and the amount paid shall be returned.

SIGNATURES TO ASSIGNMENTS AND DUE BILLS

28. *The signature to an Assignment or a Power of Substitution must be technically correct, i. e.,* it must correspond in every particular, without any change, with the name in which the security is issued, and the name of the Attorney or Substitute.

The date of an Assignment or a Power of Substitution must be legible, and any correction properly noted by the signer.

(*a*) *Titles* must be prefixed or affixed to signatures, exactly as they are in the name in which the security is issued.

(*b*) "Brothers" or "Bros." must be written as it appears in the security.

(*c*) "And" or "&," "Company" or "Co." may be written either way.

(*d*) *"Mr.," "Messrs.," "Esq.,"* or the *Residence* or *Business Address* of an individual or firm need not be made part of the signature.

(*e*) Due Bill must be signed or guaranteed by a member or a firm registered and doing business in the Borough of Manhattan.

The Committee recommends:

That Transfer Agents be given the exact form of the name to which securities are to be transferred.

That the signatures of all members and the firm signatures of each of the partners in a member's firm be filed with transfer offices in order to secure promptness of transfer of securities.

ASSIGNMENTS AND NOTARIAL ACKNOWLEDGMENTS

29. A detached Assignment of a security, must contain provision for the appointment irrevocable of an attorney, and substitute and a full description of the security, i. e., name of Company, Issue, Certificate or Bond Number and amount (the latter written in words and numerals), and *must* be acknowledged before a Notary Public with seal and date. This description must be in the same handwriting as the other facts stated. A separate Assignment must accompany each certificate or bond. (See Form No. 10 for Detached Assignment and Forms No. 11 and 12 for Acknowledgments.)

30. In the acknowledgment of an Assignment or Power of Substitution in the name of an individual, the Notary Public must certify with seal and date that he knows the person signing to be

the person named in the security, or in the Power of Substitution and that the signer acknowledged his signature. (Form No. 2.)

31. An Assignment or Power of Substitution in the name of a firm, the Notary Public must certify that he knows the person and knows him to be, or to have been on the date of execution a member of the firm, and that he acknowledged that he executed the Assignment or Power of Substitution as the act and deed of the firm. (Form No. 3.)

32. In proving, before a Notary Public, an Assignment or Power of Substitution, the witness must make deposition that he knows the person who executed the Assignment or Power of Substitution, to be the person named in the Security or Assignment, and saw the signer execute the same. For Assignments of Securities in the name of a firm, the witness must make deposition that he knows the party signing to be (or to have been at the date of execution) a member of the firm. (Forms 8 and 9.)

33. Any alteration in the wording of an Assignment must be stated over the signature of the party signing.

34. Any alteration in a Notarial Acknowledgment must be noted by signature of the Notary.

INTEREST PAYING BONDS

RULES FOR DEALING "AND INTEREST"

35. In settlement of Contracts in INTEREST PAYING BONDS interest at the rate specified in the bond shall be computed up to but not including the day of maturity of contract in all cases except "time option" contracts and "regular way delayed delivery" contracts.

36. On a contract in interest paying bonds "SELLER'S OR BUYER'S OPTION" at a rate agreed upon (as Seller or Buyer 20, 2%), the interest specified in the bond shall be computed to and including the day of sale; and thereafter interest at the agreed rate shall be computed on the Contract price plus accrued interest. An agreed rate of interest must be computed for actual elapsed days.

On a contract in interest paying bonds "REGULAR WAY DELAYED DELIVERY," interest at the rate specified in the bond shall be computed up to but not including the next "delivery day" following the date of the transaction and shall be "flat" thereafter unless otherwise agreed.

37. Bonds selling "and interest" shall so continue until, in the event of a default, the Committee on Securities rules otherwise.

38. Bonds upon which the interest is in default shall carry all unpaid coupons.

39. REGISTERED BONDS will not sell Ex interest on the day the books close for payment of interest. In settlement of Contracts in Interest Paying Registered Bonds, interest must be added to the date of maturity of Contract, and a Due Bill, signed by the party in whose name the bond stands or by a member of the Exchange or his firm for the full amount of the interest to be paid by the Company, must accompany the bond until interest is paid. A Due Bill issued by a non-member must be paid when due by the Exchange member or firm guaranteeing it.

40. Interest at the rate specified in an Interest Paying Bond must be computed on a basis of a 360-day year, i. e.:

Every calendar month is 1/12 of 360 days=30 days,
Every period from a date in one month to the same date in the following month is 30 days.

41. Income Bonds, unless otherwise directed by the Committee on Securities, must be dealt in "flat."

42. Bonds dealt in "And Interest" delivered on dates on which interest is due and payable, shall be without the coupon due on such date.

43. In all transactions involving the payment of interest, where the amount of such interest equals or exceeds five mills, it shall be considered as one cent, fractions of a cent less than five mills to be dropped; this rule to apply to loaned and borrowed securities, interest on bonds, transfers of accounts and all other transactions.

FORM OF ASSIGNMENT

Form No. 1.

Form of Assignment on a Certificate of Stock Accepted by the Committee on Stock List:

FOR VALUE RECEIVED.....hereby sell, assign, and transfer unto.....
.....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint..... Attorney to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated.....19....

.....

In the Presence of

.....

FORM OF POWER OF SUBSTITUTION

FORM NO. 1 (*a*).

POWER OF SUBSTITUTION to be placed on the *back* of a Certificate when name of Attorney has been filled in with the name of an individual or a firm.

"I (*or* we) hereby irrevocably constitute and appoint..... .....my (*or* our) substitute to transfer the within named Stock under the foregoing power of Attorney, with like power of Substitution."

Dated.....19.....

.....

IN THE PRESENCE OF

.....

FORMS FOR NOTARIAL ACKNOWLEDGMENTS AND DEPOSITIONS PRESCRIBED BY THE COMMITTEE ON SECURITIES

FORM NO. 2.

ACKNOWLEDGMENT BY AN INDIVIDUAL, BY WHOM AN ASSIGNMENT OR A POWER OF SUBSTITUTION IS EXECUTED.

State of.....
} *ss.*
County of.....

On this.....day of.....19....before me a Notary Public for the County of.....personally appeared.....to me known, and known to me to be the individual named in the within Certificate, and described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

SEAL

.....

.....

If used for a Power of Substitution, substitute for the word Instrument, "Power of Substitution, dated.....19....," the date referred to filled in.

FORM NO. 3.

ACKNOWLEDGMENT FOR FIRM.

State of.....
} *ss.*
County of.....

On this.....day of.....19....before me a Notary Public for the County of.....personally

appeared.....to me known, and known to me to be one of the firm of.....named in the within certificate, and described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said firm.

SEAL .....

.....

If used for a firm that has dissolved, omit the word "be" in third line and substitute the words "have been on.....19..."

If used for a Power of Substitution, executed by a firm that has dissolved, substitute for the word Instrument, "Power of Substitution, dated.....19..." the dates referred to filled in.

FORM NO. 4.

JOINT ACKNOWLEDGMENT OF EXECUTION OF AN ASSIGNMENT MADE BY HUSBAND AND WIFE.

State of.....
} *ss.*
County of.....

On this.....day of.....19....before me came.....and.....her husband, both of them known to me, and they severally acknowledged that they executed the foregoing (or within) Assignment and Power of Attorney, for the purpose therein mentioned.

FORM NO. 5.

ACKNOWLEDGMENT OF AN ASSIGNMENT EXECUTED BY AN UNMARRIED WOMAN OR A WIDOW.

State of.....
} *ss.*
County of.....

On this.....day of.....19....before me personally came.....to me known and known to me (or satisfactorily proven to me) to be an unmarried woman (or widow) and known to me to be the same person named in the within certificate of stock and described in and who executed the foregoing (or within) Assignment and Power of Attorney, and acknowledged to me that she executed the same for the purpose named.

SEAL .....

.....

FORM No. 6.

NOTARIAL ACKNOWLEDGMENT FOR ASSIGNMENT OR A POWER OF SUBSTITUTION EXECUTED BY A MEMBER SUSPENDED FOR INSOLVENCY.

State of.....
} ss.
County of.....

On this.....day of.....19....before me, a Notary Public for the County of.....personally appeared.....to me known and known to me to be the individual named in the within certificate, and described in and who executed the foregoing Instrument, and acknowledged to me that he executed the same on.....19....

SEAL

.....

.....

If used for a Power of Substitution, substitute the words "Power of Substitution dated.....19..." for the word "Instrument."

FORM No. 7.

NOTARIAL ACKNOWLEDGMENT FOR ASSIGNMENT OR A POWER OF SUBSTITUTION EXECUTED BY A FIRM SUSPENDED FOR INSOLVENCY.

State of.....
} ss.
County of.....

On this.....day of.....19....before me, a Notary Public for the County of.....personally appeared.....to me known and known to me to be one of the firm of.....named in the within Certificate, and described in and who executed the foregoing Instrument, and acknowledged to me that he executed the same on.....19...as the act and deed of said firm.

SEAL

.....

.....

If used for a firm that has dissolved, substitute the words "have been" for the word "be" in fourth line.

For a Power of Substitution, substitute the words "Power of Substitution dated.....19...," for the word "Instrument."

FORM NO. 8.

DEPOSITION BY A WITNESS OF THE EXECUTION OF AN ASSIGNMENT OR A POWER OF SUBSTITUTION BY AN INDIVIDUAL.

State of.....
} ss.
County of.....

On this.....day of.....19....before me, a Notary Public for the County of.....personally appeared.....to me known, who being by me first duly sworn did depose and say that he resides at..... that he knew.....named and described in the .....instrument, which was signed in witness' presence.

SEAL

.....

.....

If used for a Power of Substitution, executed by an individual, see instructions in Form No. 2.

FORM NO. 9.

DEPOSITION BY A WITNESS OF THE EXECUTION OF AN ASSIGNMENT OR A POWER OF SUBSTITUTION BY A FIRM.

State of.....
} ss.
County of.....

On this.....day of.....19....before me a Notary Public for the County of.....personally appeared.....to me known, who, being by me first duly sworn, did depose and say that he resides at..... that he knew.....and knew him to be one of the firm of.....named and described in the..... instrument, which was signed in witness' presence.

SEAL

.....

.....

If used for a firm that has dissolved, or for a Power of Substitution executed by a firm that has dissolved, see instructions in Form No. 3.

FORM NO. 10.

DETACHED ASSIGNMENT AND POWER OF ATTORNEY FOR STOCKS OR BONDS

For value received..... have bargained, sold, assigned, and transferred, and by these

presents do bargain, sell, assign and transfer unto.....
.....Shares of the.....*Capital Stock*
(or one (1) Bond) of the.....standing in
.....name on the books of said.....
represented by Certificate (or bond for.....
$.....) No.....herewith, and.....do hereby
constitute and appoint.....true and
lawful attorney, irrevocable for.....and in
.....name and stead, but to.....
use, to sell, assign, transfer and set over, all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that
.....said Attorney or.....
substitute or substitutes shall lawfully do by virtue hereof.

Dated.....19....

.....

IN PRESENCE OF

.....

FORM NO. 11.

ACKNOWLEDGMENT ON A DETACHED ASSIGNMENT MADE BY AN INDIVIDUAL.

State of.....
} *ss.*
County of.....

On this.....day of.....19....before me, a Notary Public for the County of.....personally came.....to me known to be the individual named in the *annexed* Certificate of Stock (or Bond) and described in and who executed the foregoing Instrument, and acknowledged to me that he executed the same.

SEAL

.....

.....

FORM NO. 12.

ACKNOWLEDGMENT ON A DETACHED ASSIGNMENT EXECUTED BY A FIRM.

State of.....
} *ss.*
County of.....

On this.....day of.....19....before me, a Notary Public for the County of.....personally

appeared.....to me known and known to me to be one of the firm of.....named in the *annexed* Certificate of Stock (or Bond) and described in and who executed the foregoing Instrument, and acknowledged that he executed the same as the act and deed of said firm.

SEAL .....

.....

If used for a firm that has dissolved, see instructions in Form No. 3.

Form 403

Requirements of the Committee on Securities for Companies Offering the Privilege to Subscribe for New Securities to Holders of its Securities Listed on the Exchange

1. Give notice, as provided in the agreement contained in the listing application:

"To notify the Stock Exchange thirty days in advance of the effective date of any change in the authorized amounts of listed securities."

2. Give at least ten (10) days' notice of the closing of the transfer books, or date, if books do not close, to take record of security holders entitled to "Rights."

If affirmative action of stockholders is required for the issuance of the new securities it is proposed to offer, the closing of the books must be subsequent to the date when such action is taken.

3. Fix the date at which the "Right" terminates at least twenty (20) days after the closing of the books.

4. Notice must be given the Exchange, at least ten (10) days before books close, of the date upon which "Warrants" will be issued to stockholders. The definite offer must be made to the stockholders before the closing of the transfer books, after which no change may be made, and a signed copy of the offer filed at the office of the Secretary of the Exchange, together with the specimen of each form of "Warrant" to be issued.

5. Avoid using dates that fall on Saturdays or holidays.

6. In all offers of "Rights," the "Right" must be given to each share of stock or to the minimum bond issued. Provision must be made for the acceptance of assignments for fractions when assembled in the "Right" to subscribe for one new share

of stock or one new bond (of the minimum denomination to be issued) or any multiple of either.

7. An assignable "Warrant" issued by the Company stating the right it represents, only is acceptable for listing, they must be transferable the same as stock to new names and for amounts aggregating the whole of a surrendered "Warrant."

8. A specimen of each form of receipt to be issued to subscribing "Warrant" holders must also be filed.

9. Notification of wish to subscribe, and subscriptions must be received at, and securities issued from, the Company's office or agency in the Borough of Manhattan, New York City.

The following rule of the Exchange applies to securities upon which a "Right" to subscribe is given.

"Chapter VI, Sec. 1. Transactions in shares shall be ex-dividend or ex-rights as the case may be on the day of the closing of transfer books therefor, except transactions therein made specifically for "cash."

"Rights" are deliverable under the following:

"Rules for delivery.

"(*a*) An Assignment of 'Rights' accruing on each 100 shares, or Assignments of 'Rights' on odd lots aggregating the 'Right' on 100 shares.

"(*b*) An Assignment for the exact amount, or Assignments aggregating the amount, on a sale of 'Rights' accruing on odd lots of stock."

Rights to subscribe will be admitted to dealings on the Exchange only when approved by the Committee on Securities after receipt of official notice as to the details of an offering. Dealings in "Rights" when permitted will begin on the record date of stockholders entitled thereto.

An application must be made to this Exchange for the listing of additional stock, and such additional amount listed, before it can be registered.

E. V. D. Cox, *Secretary*

November 4, 1927.

The following extracts from Chapter V of the Rules adopted by the Governing Committee of the New York Stock Exchange relate to the closing of books for transfer purposes:

Form 404

Closing of Transfer Books

Sec. 1. Transactions in shares shall be ex-dividend or ex-rights as the case may be on the day of the closing of transfer books therefor, except transactions therein made specifically for "cash." Should such closing of transfer books occur upon a holiday or half-holiday observed by the Exchange, this rule shall apply for the preceding full business day. The Committee on Securities may, however, in any particular case direct otherwise.

Sec. 2. The buyer shall be entitled to receive all dividends, rights and privileges, except voting power, which may pertain to securities contracted for, for which the transfer books shall close during the pendency of the contract.

When such contract shall mature before the date fixed for payment of such dividend, there shall be delivered for such dividend a due-bill signed or guaranteed by a member.

Due-bills for dividends shall be redeemable on the date the dividend is paid.

When a security is sold before the day on which it is quoted "ex-rights" and is delivered thereafter, the buyer shall on its delivery pay only the market price of the security "ex-rights." He shall pay the balance due on the contract, when the seller delivers the "rights," at any time on or before the day set by the Committee on Securities for settlement of contracts in said "rights."

When a security is loaned before the day on which it is quoted "ex-rights," and is returned thereafter, the lender shall on its return pay only the market price of the security "ex-rights." He shall pay the balance due on the contract, when the borrower delivers the "rights," at any time on or before the day set by the Committee on Securities for settlement of contracts on "rights."

The foregoing shall also apply in the case of stock or scrip dividends, except that such stock or scrip dividends shall be due and deliverable on the distribution date thereof.

Form 405

Companies Having Securities on N. Y. Stock Exchange

The Committee on Securities of the New York Stock Exchange has prepared for the guidance of officials of companies whose securities are listed on the Exchange outlines of information to be furnished to the Exchange under various circumstances.

In all cases immediate notice should be given the Exchange of any action affecting the securities of a company.

At least ten days' advance notice of any taking of a record of security holders (or closing of transfer books, if that practice is followed) is necessary for the proper conduct of security transactions.

Specifically, the information required in each case is as follows:

PAYMENT OF DIVIDENDS:

Date of Directors' Meeting.
Whether dividend has been designated as regular quarterly, semi-annual or otherwise.
Amount per share.
Payable date.
Record date (close of business)
or Date books close
and Date books open.

PAYMENT OF INTEREST:

Advance notice of the payment of interest on all bonds.
In the case of Registered Bonds, the
Record date (close of business)
or Date books close
and Date books open.

MEETINGS OF STOCKHOLDERS:

Record date (close of business)
or Date books close
and Date books open.
Date of Meeting.
If Special Meeting, purpose thereof.

RIGHTS TO SUBSCRIBE:

Record date. (This must be subsequent to any action necessary to complete authorization)
Subscription date. (This must be at least twenty days after the record date)
Definite statement as to ratio of new securities per share of present stock.
Subscription price.
Place of subscription in New York and elsewhere.
How soon after record date warrants will be issued.
Definite plan must be published prior to record date.
New securities should be issued immediately upon payment in full on or before subscription date.

ADDITIONAL AMOUNTS OF LISTED SECURITIES:

Immediate notice of issuance.

Application to list the additional amount should be made before issuance.

REDEMPTION OF SECURITIES:

Immediate notice of any call for the redemption of Bonds or Stock, together with list of specific bond numbers or stock certificate numbers called.

Date of redemption and place in New York and elsewhere at which payment will be made.

CHANGES IN AUTHORIZED CAPITAL STOCK:

Thirty days must elapse after receipt of official notice by the Exchange before additional amount may be admitted to dealings.

E. V. D. Cox, *Secretary*

June 2, 1927.

XXVIII

HOLDING COMPANIES

1. Modern Tendencies

Several reasons exist for the modern tendency toward holding companies. Certain of the earlier devices for elimination of competition proved ineffective or else were declared illegal. The Sherman Anti-Trust Act of 1891 was intended to prevent combinations in restraint of trade, and many states have enacted statutes of similar import. Pools, which were the outgrowth of the panic of 1873 and resulting depression, depended for their enforcement on the good faith of all the members. Naturally, somebody found occasion to break the agreement when a continuation of it proved unprofitable.

Next came the trust. Various trusts were declared illegal on the grounds of monopoly and restraint of trade.

The holding company appears to have become the solution to the problem of effective control of two or more enterprises which are in some way related, either as competitors or as producers in different stages in the process of converting raw materials into consumable goods. While a holding company is one formed to control other companies through stock ownership, a holding company may be also an operating company.

Under the common law one company cannot hold the stock of another company, but this disability has been removed by statutory enactment in most states. New Jersey was first to pass such a law in 1888; soon other states, notably Delaware and Maine, followed suit.

It does not follow that all combinations effected through holding companies will be regarded as legal by the courts.

Thus in the Northern Securities Case, as well as others, the United States Supreme Court held that the control of competing companies by a holding company was illegal under the Sherman Anti-Trust Act. The test of legality is whether or not competition is lessened.

The Clayton Act, passed in 1914, prohibits the acquisition by one company of all or any of the stock of another "where the effect may be substantially to lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

It is not an infrequent occurrence for a corporation to establish subsidiary companies for the purpose of carrying on some special activity. There are several advantages in this arrangement. If the venture fails the loss is limited to the sum invested in the subsidiary. The organization of the subsidiary can be made such as the special circumstances require.

2. Consolidated Statements

In case of subsidiary companies established by a parent company for the carrying out of some special project the parent company is likely to own all or practically all of the subsidiary company's stock. Where, however, affiliations are established through the purchase of stock in some hitherto independent company the percentage of stock owned by the controlling company may vary from a bare majority of the voting stock to 100% ownership. Indeed, it is possible to control the policies of a company through a minority interest, if the majority interest lacks concentration of purpose; but reasonable certainty of control demands the ownership of a majority of the voting stock of the company controlled.

When a majority interest in one company is owned by another company it becomes necessary to decide whether or not the statements of the two companies should be con-

solidated. In case of complete ownership of stock there is no doubt but that the statements should be consolidated; but where the percentage of stock owned by the parent company lies between the range of, say 51% and 95%, the question must be settled by ascertaining whether the two companies are really operated as a unit.

The Federal tax laws have had much influence on this question. The Revenue Act of 1917 contained no provision relative to consolidated statements. The American Institute of Accountants recommended the adoption of consolidated statements, and somewhat later the Treasury Department issued regulations to the effect that the Commissioner of Internal Revenue might require certain affiliated corporations to furnish consolidated returns of net income and invested capital. In the Revenue Act of 1918 specific provision was made for consolidated returns, and provided that two or more domestic corporations were to be regarded as affiliated:

1. If one corporation owned directly or controlled through closely affiliated interest, or by a nominee or nominees, substantially all the stock of the other or others, or
2. If substantially all the stock of two or more corporations was owned or controlled by the same interests. *(Art. 633, Regulations 45.)*

The requirements were modified and restated in subsequent laws and regulations.

3. The Work Sheet

To consolidate the balance sheets of two or more affiliated companies a work sheet should be employed. The preferable arrangement is to list the accounts vertically and the companies horizontally, columns being added for "Inter-company Adjustments" and "Consolidated Balance Sheet." This arrangement is illustrated in Form 406. Of the $50,000 surplus on the books of Company B, $10,000 was in existence at the time Company X acquired 900 shares of its stock. The 400 shares of stock of Company A were acquired at

Form 406
Consolidating Work Sheet for
the X Company and Subsidiaries as at December 31, 19....

Accounts	Company A	Company B	Company X	Inter-company adjustment and Elimination	Consolidated Balance Sheet
		Assets			
Capital Stock of Company A Owned 400 shares bot. at $80 per share (80% ownership)			$ 32,000.00	(1) $32,000.00	
Capital Stock of Company B Owned 900 shares bot. at $110 per share (90% ownership)			99,000.00	(2) 99,000.00	
Plant	$20,000.00	$130,000.00	40,000.00		$190,000.00
Merchandise	40,000.00	15,000.00	20,000.00		75,000.00
Accounts Receivable	12,000.00	10,000.00	15,000.00	(3) 15,000.00	22,000.00
Cash	3,000.00	8,000.00	20,000.00		31,000.00
Goodwill			10,000.00	(1) 8,000.00	2,000.00
	$75,000.00	$163,000.00	$236,000.00		$320,000.00
		Liabilities			
Capital Stock:					
Company X—2,000 shares			$200,000.00		$200,000.00
Company A 500 "	$50,000.00			(1) $40,000.00	10,000.00
Company B 1,000 "		$100,000.00		(2) 90,000.00	10,000.00
Bonds			30,000.00		30,000.00
Accounts Payable	25,000.00	13,000.00	6,000.00	(3) 15,000.00	29,000.00
Surplus		50,000.00		(2) 9,000.00	41,000.00
	$75,000.00	$163,000.00	$236,000.00		$320,000.00

$20 per share below its book value, which was $100. Of the $25,000 accounts payable on the books of Company A, $15,000 is owing to Company X for merchandise purchased at its cost price.

The numbers in parentheses in the "Inter-company Adjustments and Eliminations" column are inserted to enable the reader to distinguish the debit and credit elements of the various adjustments. These may be set up in form of journal entries, thus:

(1)		
Capital Stock, Company A'	$40,000.00	
To Capital Stock of Company A Owned		$32,000.00
Goodwill		8,000.00
(2)		
Capital Stock, Company B	$90,000.00	
Surplus	9,000.00	
To Capital Stock of Company B Owned		$99,000.00
(3)		
Accounts Payable	$15,000.00	
To Accounts Receivable		$15,000.00

4. Treatment of Goodwill

If one company buys the capital stock of another company for a figure less than its book value the inference is that its assets are overvalued. Therefore in making the eliminating entry for stock of the subsidiary owned it is necessary to credit some account for the difference between the cost of the subsidiary's stock to the holding company and the par value of same, in this instance $8,000. One plan is to credit the asset account where the overvaluation is supposed to exist. Had this procedure been followed in entry (1) above, the credit of $8,000 would have been to "Plant" instead of to "Goodwill." This procedure is correct and may be justified under certain conditions, as, for example, where there is no difficulty in ascertaining in what particular asset account of the subsidiary company the overvaluation

exists. Where this cannot be done it is customary to credit Godwill account, if goodwill of sufficient amount exists in the balance sheets of the affiliated companies. If not, Capital Surplus account is credited.

If the parent company pays in excess of book value for the stock of the subsidiary, the adjustment is made by charging the difference between cost and book value to Goodwill account when the elimination of inter-company stock holdings is made in the consolidating work sheet.

5. Treatment of Surplus

Surplus on the books of the subsidiary at date of acquisition is eliminated, in so far as it applies to stock held by the controlling company. Thus if the holding company acquires 100% stock ownership in the subsidiary all surplus of subsidiary at date of acquisition is eliminated; if 75% ownership is acquired, 75% of surplus of subsidiary at date of acquisition is eliminated, and so on. In the work sheet (Form 406) the surplus of Company B at date Company X acquired a 90% interest therein was $10,000, hence 90% of this, or $9,000, is eliminated. The reason for the elimination of this amount of surplus is that it is represented in the investment account "Capital Stock of Company B Owned" and is not surplus accumulated by the affiliated group of companies.

6. Treatment of Other Items

A brief explanation of other adjustments frequently required in preparing consolidated balance sheets are as follows:

1. Inter-company payables and receivables. These exactly offset each other and are eliminated. See adjustment (3) in the consolidating work sheet, Form 406.

2. Inter-company dividends payable and receivable. These exactly offset each other and are eliminated.

3. Inter-company loans as distinguished from accounts

receivable and payable. These exactly offset each other and are eliminated.

4. Inter-company bond ownership. Bonds of one affiliated company owned by another are eliminated, only those held by the public being extended into the "Consolidated Balance Sheet" column.

5. Inter-company profit in inventories arising from the sale of goods by one affiliated company to another at a profit should be eliminated by crediting Inventory account and charging Earned Surplus account of the affiliated group, none being deducted from Earned Surplus account pertaining to the minority interest since from their point of view this profit is earned.

7. The Consolidated Balance Sheet

A consolidated balance sheet derived from the data shown in the "Consolidated Balance Sheet" column of Form 406 is shown in Form 407. Note that all inter-company items are eliminated.

In setting up the proprietorship account on the consolidated balance sheet it is important that the minority interest be set out separately from the equity belonging to the stockholders of the holding company. This involves a division of the surplus of subsidiary companies acquired since date of affiliation on the basis of the percentage of stock of such companies owned by the controlling company. See Form 407 for arrangement of proprietorship items.

It should be remembered that the consolidated balance sheet represents the condition of no single company, but is a statement made up to show the status of two or more companies considered as a single enterprise although retaining their separate legal status, accounts and organization. The affiliated companies continue making up their monthly and annual statements the same as if there existed no relationship necessitating the setting up of an additional consolidated statement to show the status of the group.

Form 407

Consolidated Balance Sheet for the X Company and Subsidiaries as at December 31, 19....

Assets			Liabilities		
Current Assets:			*Current Liabilities:*		
Cash	$ 31,000.00		Accounts Payable		$ 29,000.00
Accounts Receivable	22,000.00		*Fixed Liabilities:*		
Merchandise	75,000.00	$128,000.00	Bonds		30,000.00
Capital Assets:			*Minority Stockholders' Interest:*		
Plant	$190,000.00		Company A Capital Stock	$ 10,000.00	
Goodwill	2,000.00	$192,000.00	Company B Capital Stock	10,000.00	
			Company B Minority Surplus	4,100.00	24,100.00
		$320,000.00	*Company X Stockholders' Interest:*		
			Capital Stock	$200,000.00	
			Surplus (90%)	36,900.00	236,900.00
					$320,000.00

8. Consolidated Balance Sheet of U. S. Steel Corporation

To illustrate the practical application of some principles involved in consolidated balance sheet construction the consolidated balance sheet of the United States Steel Corporation is shown in Form 408.

The properties owned by the various subsidiary companies are combined under "Property Investment Accounts." Under "Current Assets" inventories are listed after deducting profits earned by subsidiary companies on inter-company sales of products on hand in inventories. The capital stocks of subsidiary companies not held are shown as a separate item on the liability side. The undivided surplus is shown exclusive of profits earned by subsidiaries on inter-company sales of product still on hand in the inventories. The treatment of this item is considered in a footnote to the balance sheet.

FORM 408

CONSOLIDATED GENERAL BALANCE SHEET DECEMBER 31, 1927

ASSETS		
Property Investment Accounts—Properties Owned and Operated by the Several Companies:		
Balance of this account as of December 31, 1927, less Depletion, Depreciation and Amortization Reserves per table on page 14 (Pamphlet report)		$1,709,779,732.10
Mining Royalties:		
Mining Royalties on unmined ore, in respect of part of which notes of subsidiary companies are outstanding in amount of $24,907,858.64, as see contra	$ 66,117,766.47	
Less, Reserved from Surplus to cover possible failure to realize all of same	7,000,000.00	59,117,766.47
Deferred Charges (Applying to future operations of the properties):		
Advanced Mining and other operating expenses and charges	$ 3,168,683.23	
Discount on subsidiary companies' bonds sold (net)	890,049.04	4,058,732.27
Investments:		
Outside Real Estate and Investments in sundry securities, including Real Estate Mortgages	$ 10,111,077.82	
Land Sales Installment Contracts and Mortgages under Employes' Home-owning Plan	15,803,711.58	25,914,789.40
Sinking and Reserve Fund Assets:		
Cash resources held by Trustees account of Bond Sinking Funds (Trustees also hold $229,384,000 of redeemed	$ 1,720,294.55	

bonds, not included as liabilities in this Balance Sheet.)		
Contingent Fund and Miscellaneous Assets.....	3,834,586.91	
Insurance and Depreciation Fund Assets (includes bonds available for future sinking fund requirements):		
Securities* $92,818,368.92		
Cash 3,078,791.09	95,897,160.01	
		101,452,041.47

* NOTE.—There are not included in this item capital obligations of subsidiary companies amounting to $43,615,365.54 held in these funds, as such obligations are excluded from liabilities in this consolidated balance sheet. Such securities were acquired direct by United States Steel Corporation from the subsidiaries.

Current Assets:		
Inventories, less credit for Reserve and for amount of inventory values representing Profits earned by subsidiary companies on Inter-Company sales of products on hand in Inventories December 31, 1927. (See note opposite) $271,168,001.84		
Accounts Receivable.....	72,134,805.46	
Bills Receivable	7,473,582.49	
Agents' Balances	1,549,627.52	
Sundry Marketable Securities (including part of U. S. Gov't Securities owned).....	59,588,620.93	
Time and other special Bank Deposits.....	8,477,998.71	
Cash (in hand and on deposit with Banks, Bankers and Trust Companies, subject to cheque)..	112,867,469.94	533,260,106.89
		$2,433,583,168.60

LIABILITIES

Capital Stock of United States Steel Corporation:		
Common $711,623,500.00		
Preferred	360,281,100.00	$1,071,904,600.00
Capital Stocks of Subsidiary Companies Not Held by United States Steel Corporation (Book value of same)		446,919.29
Bonded Mortgage and Debenture Debt Outstanding:		
(For detailed statement see page 22 pamphlet report.)		
United States Steel Corporation 50 Year 5% Bonds $171,372,000.00		
United States Steel Corporation 10-60 Year 5% Bonds	157,463,000.00	
	$328,835,000.00	
Subsidiary Companies' Bonds, guaranteed by U. S. Steel Corporation.....	94,540,000.00	
Subsidiary Companies' Bonds, not guaranteed by U. S. Steel Corporation.....	51,259,900.00	
Subsidiary Companies' Real Estate Mortgages and Purchase Money Obligations.....	539,628.89	474,174,528.89
Subsidiary Companies' Mining Royalty Notes—Maturing over a period of 31 years, substituted for previously existing mining royalty obligations—Guaranteed by United States Steel Corporation, $23,782,858.64, not guaranteed, $1,125,000; non-interest bearing, $465,001.08		24,907,858.64
Current Liabilities:		
Current Accounts Payable and Pay Rolls.....$	47,256,233.11	
Accrued Taxes, not yet due, including reserve for Federal Income Tax.....	36,247,000.10	

Accrued Interest, Unpresented Coupons and Unclaimed Dividends	6,661,068.91	
Preferred Stock Dividend No. 107, payable February 28, 1928	6,304,919.25	
Common Stock Dividend No. 94, payable March 30, 1928	12,453,411.25	108,922,632.62
Total Capital and Current Liabilities		$1,681,356,539.44
Sundry Reserves:		
Contingent, Miscellaneous Operating and Other Reserves	$ 78,613,025.84	
Insurance Reserves	40,568,689.70	119,181,715.54
Appropriated Surplus to Cover Capital Expenditures: (See statement on page 14 pamphlet report.)		
Invested in Property Account—Additions and Construction		270,000,000.00
Undivided Surplus of United States Steel Corporation and Subsidiary Companies:		
Capital Surplus provided in organization	$ 25,000,000.00	
Balance of Surplus accumulated by all companies from April 1, 1901, to December 31, 1927, per table on page 2	338,004,913.62	
Total, exclusive of Profits earned by Subsidiary Companies on Inter-Company sales of products on hand in Inventories December 31, 1927 (see note below)		363,044,913.62
		$2,433,583,168.60

NOTE.—That part of the Surplus of Subsidiary Companies representing Profits on sales of materials and products to other subsidiary companies and on hand in latter's Inventories is, in this Balance Sheet, deducted from the amount of Inventories included under Current Assets.

XXIX

BANKRUPTCY AND INSOLVENCY

1. Insolvency

The state insolvency laws are subordinate to the national bankruptcy law, passed in 1898, and for this reason one who seeks to take advantage of a state insolvency law may be forced into bankruptcy under the national law. It is for this reason that it is usual to invoke the aid of the national law in the first instance. Should the national bankruptcy law be repealed the state laws would again become supreme. Nevertheless, should none of the interested parties object, the estate of an insolvent debtor might be distributed under state laws.

Most state insolvency laws do not grant to the insolvent a discharge from debts, but simply lay down certain rules for the distribution of his estate after he has made an assignment, leaving it to the debtor to secure releases from his creditors.

The difficulty in appealing to state insolvency laws is that in case any question is raised as between federal and state courts by an appeal to the federal courts, as the result of the action of any creditor or of the insolvent, the federal law is supreme and the state law is for practical purposes nullified.

2. National Bankruptcy Act

The present national bankruptcy law operates to apply an insolvent debtor's property ratably to the liquidation of his debts, also to deprive his creditors of the right to prosecute him. This law is enforced by the District courts of the United States. To these courts is granted power to liquidate

and distribute the estates of bankrupts and to grant discharges in bankruptcy.

The estate of a bankrupt is administered by a trustee appointed by the court, but if necessary to protect the estate a receiver may intervene, taking charge until the trustee qualifies.

The District courts may appoint referees to consider petitions and do other things which the judges themselves might otherwise do, except that discharges and compositions must be passed upon by the courts. Such referees must give suitable bond, not exceeding $5,000, with such sureties as the court may require.

3. Application of National Bankruptcy Act

Any natural person may become a voluntary or involuntary bankrupt, who is not a wage earner, i. e., if he does not earn in excess of $1,500 annually, or who is not engaged primarily in tilling the soil.

Any corporation engaged chiefly in manufacturing, trading, printing, publishing or mercantile pursuits, and owing debts of not less than $1,000 may be adjudged a voluntary bankrupt; but corporations cannot become involuntary bankrupts. Railroads, national banks, and certain other corporations cannot take advantage of the law.

4. Voluntary and Involuntary Bankruptcy

Corporations cannot become voluntary bankrupts, but an individual may act to take advantage of the law or he may be thrown into bankruptcy by act of his creditors, providing an act of bankruptcy has been committed. The national bankruptcy law specifies the acts of bankruptcy, as follows:

1. Concealment, or fraudulent transfer, of property in order to hinder, delay or defraud creditors.

2. Transfer of property for the purpose of giving preference to one creditor over other creditors during the period of insolvency.

3. Suffering, during insolvency, any creditor to secure a preference through legal proceedings, when the insolvent shall not within

five days before a sale or final disposition of the property, affected by such proceeding, have vacated, or discharged them.

4. Making a general assignment for benefit of creditors, or while a person is insolvent, applying for a trustee or receiver, under the laws of a state or of the United States.

5. Admitting insolvency in writing; also willingness to be adjudged a bankrupt.

The petition must be filed within four months of the date of committing the act of bankruptcy.

To be adjudged a bankrupt one must (*a*) be insolvent and (*b*) have committed an act of bankruptcy. Thus if a corporation commits an act of bankruptcy but cannot be shown to be insolvent it cannot be adjudged a bankrupt. Neither, being insolvent, can a corporation be adjudged a bankrupt if it has not committed an act of bankruptcy.

5. Bankruptcy Procedure

If there are more than twelve creditors, three or more, or if less than twelve creditors, one thereof holding provable claims exceeding $500, may present a petition alleging the insolvency of the company and that it has committed an act of bankruptcy. The alleged bankrupt must then be served with notice of this petition and be given an opportunity to show that he or it is not insolvent or has not committed an act of bankruptcy. Failure to defend will result in the decree of bankruptcy.

It is the bankrupt's duty to file schedules of assets and liabilities; but the referee will do this if the bankrupt fails to do it.

In cases of voluntary bankruptcy the bankrupt presents a petition asking for benefit of the provisions of the law, accompanying same with schedules of assets and liabilities.

As soon as the bankruptcy is adjudicated the referee appointed to take charge calls a meeting of creditors who elect a trustee in whom is vested title to all of the property of the bankrupt.

The trustee then takes charge of the estate and acts in a

fiduciary capacity for the benefit of both bankrupt and creditors. He collects debts owing to the estate, liquidates its assets, and pays its creditors. The trustee must give bond to the required amount, as determined by the creditors; but if the creditors fail to require it the court will do so.

Either one or three trustees may be appointed. If three, the concurrence of two is necessary to the validity of an act. The trustee's fee is $5 upon filing the petition and whatever commissions are allowed by the court, not to exceed 6% on the first $500, 4% on amounts in excess of $500 and less than $1,500, 2% on amounts in excess of $1,500 and less than $2,000, and 1% on amounts in excess of $10,000, the percentages being computed on amounts disbursed by the trustees.

For compositions, trustees are allowed not in excess of ½ of 1% on amounts paid to creditors.

If there are three trustees one fee is apportioned among them in accordance with the amount of work done by each.

After all of the bankrupt's property not subject to exemption has been distributed to creditors he may petition the court for a discharge. A day for a hearing is decided upon, creditors are notified, and if none objects the bankrupt is discharged. If there appears sufficient reason the court may refuse the discharge.

6. Effect of Discharge in Bankruptcy

A discharge in bankruptcy or the confirmation of a composition relieves the bankrupt of all provable debts except:

1. Taxes

2. Judgments for fraud or securing money by false pretenses or false representations, or for wilful and malicious injury to the property or person of another.

3. Debts not scheduled in time for proof and allowance, if known to the bankrupt, unless the creditor had been notified or knew of the proceedings.

4. Debts created by fraud, embezzlement or misappropriation on the part of the bankrupt while acting in a fiduciary capacity.

Provable debts are defined as follows by the National Bankruptcy Act (Sec. 63):

1. A fixed liability as evidenced by a judgment or instrument in writing, whether payable at the time of the bankruptcy proceedings, or not.

2. Judgments for costs, debts founded on open account, and debts founded upon provable debts reduced to judgment.

7. Distribution

After the bankrupt has transferred all of his property to creditors a policy is fixed upon in accordance with which the trustee proceeds to reduce all of the assets to cash and to pay off debts in the following order:

1. Taxes.
2. Actual and necessary costs of preserving the estate after petition is filed.
3. Fees paid by petitioning creditors, in involuntary cases.
4. Costs of administration.
5. Wages due workmen, clerks or servants, earned within three months prior to the proceedings, but not exceeding $300 to each claimant.
6. Debts due any person entitled to priority by the laws of the state or of the United States.

The exemptions granted the bankrupt are those allowed by the laws of the state in which the bankrupt resides, in force at the time the petition is filed.

Property transferred or payments made to a creditor within four months of the time of filing the petition may be recovered, if the creditor had knowledge of the insolvency. If the creditor did not know of the insolvency he cannot participate in the estate unless he surrenders the preference he has secured.

Creditors having secured debts may participate in the estate only in so far as the security falls short of their claims.

Creditors must submit to the referee written proof of their claims. These the referee allows or disallows, according to the character of the proofs. If necessary to satisfy his demands for information regarding claims the referee may take testimony.

The trustee submits to the referee and court such schedules as may be necessary to explain his activities in detail.

Sometimes the creditors of a bankrupt agree upon a *composition,* whereby upon certain conditions the bankrupt receives back his property and is discharged from his debts. Such composition may take the form of an offer from the bankrupt to his creditors which after being accepted by them must be submitted to the court for approval. If the court confirms the composition the confirmation serves as a discharge, but in this case the bankrupt gets back his property.

Both compositions and discharges may be set aside within one year from date granted.

8. Duties of Referees

Following is the provision of Sec. 39 of the National Bankruptcy Act regarding the appointment and duties of referees:

Courts of bankruptcy shall . . . appoint referees for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause. Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be remedied; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties at interest; (4) give notice to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file schedules of property and lists of creditors required to be filed by the bankrupts, or cause same to be done, when the bankrupts fail, refuse or neglect to do so; (7) safely keep, perfect and transmit to the clerks the records herein required to be kept by them when the cases are concluded; (8) transmit to the clerks such papers as may be on file, as needed in any proceedings; and (9) preserve the evidence taken before them. Referees shall not act in cases in which they

are interested; practice as attorneys in any bankruptcy proceedings; or purchase, directly or indirectly, any property of an estate in bankruptcy.

9. Duties of Trustees

Following is the provision of Sec. 47 of the National Bankruptcy Act regarding the appointment and duties of trustees:

The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one or three trustees of such estate. If the creditors do not appoint a trustee as herein provided, the court shall do so. Trustees shall account for and pay over to the estates under their control all interest received by money the property of such estate; deposit moneys in designated depositories; disburse money only by check or draft on the depositories; furnish such information concerning the estates as may be requested by parties in interest; keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; lay before the final meeting of the creditors detailed statement of the administration of the estate; pay dividends within ten days after they are declared by the referees; and set apart the bankrupt's exemptions.

10. Schedules of Debts and Assets

Under the National Bankruptcy Act two schedules are required, viz.,

1. *Schedule A,* subdivided into five sections, showing bankrupt's debts, and their rank, each subdivision being signed by the petitioner.

2. *Schedule B,* subdivided into six sections, showing the bankrupt's assets, each subdivision being signed by the petitioner.

11. Schedule A

Schedule A, showing debts, is subdivided as follows:

Subdivision 1—Lists the creditors to be paid in full, or

who by law are entitled to priority, giving information as to creditors' names, addresses, where authority for debt may be found, where and when contracted, consideration and amount. The order of these debts is as follows:

(*a*) Taxes and debts due and owing to the United States.

(*b*) Taxes due and owing to the state, or to any county, district or municipality thereof.

(*c*) Wages due workmen, clerks, or servants, to an amount not exceeding $300 each, earned within three months before filing the petition.

(*d*) Other debts having priority by law.

See Form 421.

Subdivision 2—Lists creditors holding securities; gives particulars as to securities held, with dates of same and when given; also particulars concerning each debt, and whether contracted as partner or joint contractor with any other person, and if so, with whom; residences (if not known, that fact must be stated); values of securities; amount of debts. See Form 421.

Subdivision 3—Lists creditors having unsecured claims, their names, residence (if not known, that fact must be stated); when and where contracted, nature and consideration of debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor or with any other person; and if so, with whom.

When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, any claim by way of set-off being stated in the schedule of property. See Form 421.

Subdivision 4—Lists liabilities on notes or bills discounted, which ought to be paid by the drawers, makers, acceptors or endorsers. The dates of the notes or bills, and when due, with the names, residences, and the business or occupation

of the drawers, makers or acceptors thereof are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated and his business and place of residence. The same particulars as to votes or bills on which the debtor is liable as indorser.

In so far as known, names of holders and ledger page are to be inserted; if unknown, so state; their residence if known; if unknown, so state; place where debt was contracted; nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom. See Form 421.

Subdivision 5—Lists accommodation paper, names of holders, residences (if unknown, this must be stated), names and residences of persons accommodated, place where contracted, nature and amount of liability.

12. Schedule B

Schedule B, listing the assets, is divided into the following subdivisions:

Subdivision 1—Lists real estate, showing, in all cases, location and description of all real estate owned by debtor or held by him; incumbrances thereon, if any, and dates thereof; statement of particulars relating thereto; also estimated value. See Form 421.

Subdivision 2—Lists personal property belonging to the bankrupt, values being given in the following order:

(*a*) Cash on hand.

(*b*) Bills of exchange; promissory notes or securities of any description (each to be stated separately).

(*c*) Stock in trade.....business of..... at.....of the value of.....

(*d*) Household goods and furniture, household stores, wearing apparel and ornaments of the person.

(*e*) Books, prints and pictures.

(*f*) Horses, cows, sheep and other animals, with number of each.

(*g*) Carriages and other vehicles.

(*h*) Farming stock and implements of husbandry.

(*i*) Shipping, and shares in vessels.
(*k*) Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated.
(*l*) Patents, copyrights and trade marks.
(*m*) Goods or personal property of any other description with the place where each is situated.

See Form 421.

Subdivision 3—Lists choses in action, the value of each class being stated, as follows:

(*a*) Debts due petitioner on open account.
(*b*) Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds.
(*c*) Policies of insurance.
(*d*) Unliquidated claims of every nature, with their estimated value.
(*e*) Deposits of money in banking institutions and elsewhere.

See Form 421.

Subdivision 4—Lists property in reversion, remainder or expectancy, including property held in trust for the debtor, or subject to any power or right to dispose of or to charge. Details are required as to land, personal property; property in money, stocks, shares, bonds, annuities, etc.; rights and powers, legacies and bequests, and supposed value of bankrupt's interest in same.

It also lists property heretofore conveyed for benefit of creditors and amount realized therefrom. What sum or sums have been paid to counsel, and to whom, for service rendered or to be rendered in connection with the bankruptcy proceedings. See Form 421.

Subdivision 5—Lists property claimed as exempt from operation of the acts of Congress relating to bankruptcy, giving each item its proper valuation; and if any portion of it is real estate, its location, description and present use.

(*a*) Military uniforms, arms and equipment.
(*b*) Property claimed to be exempt by state laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the state creating the exemption. Values must be stated. See Form 421.

Subdivision 6—Lists books, papers, deeds and writings relating to bankrupt's business and estate. If in the custody of a person or persons other than the petitioner, names of such persons must be given, also reason why they have been given such custody. See Form 421.

13. Summary of Debts and Assets

A summary of schedules A and B is also required, known as Summary of Debts and Assets. See Form 421.

14. Forms Adopted by U. S. Supreme Court

Forms corresponding to the above outlines of Schedules A and B, as adopted and established by the United States Supreme Court, may be had from legal stationers. The complete set, which is made out in triplicate, consists of thirteen forms, as follows:

1. Debtor's petition (Form 409).
2. Schedule A (1) Statement of All Creditors Who Are to Be Paid in Full, or to Whom Priority Is Secured by Law (Form 410).
3. Schedule A (2) Creditors Holding Securities (Form 411).
4. Schedule A (3) Creditors Whose Claims Are Unsecured. (Form 412).
5. Schedule A (4) Liabilities on Notes or Bills Discounted, Which Ought to Be Paid by the Drawers, Makers, Acceptors or Indorsers (Form 413).
6. Schedule A (5) Accommodation Paper (Form 414).
7. Schedule B (1) Real Estate Owned (Form 415).
8. Schedule B (2) Personal Property (Form 416).
9. Schedule B (3) Choses in Action (Form 417).
10. Schedule B (4) Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor, or Subject to Any Right to Dispose of or to Charge (Form 418).
11. Schedule B (5) Exempted Property (Form 419).
12. Schedule B (6) Books, Papers, Deeds and Writings Relating to Bankrupt's Business and Estate (Form 420).
13. Summary of Debts and Assets (Form 421).

Schedule A (5) contains space for the bankrupt's oath to Schedule A.

Schedule B (6) contains space for the bankrupt's oath to

Schedule B. All the forms listed above are reproduced below, as Forms 409 to 421 inclusive.

15. Property Exempted

As indicated, the property to be exempted from sale for payment of the bankrupt's debts is determined by the laws of the state in which the bankrupt resides. Thus in New York exempted property consists of certain articles of household equipment, beds, dishes, etc., and under certain conditions, household furniture, tools, etc., not exceeding $250 in value; also, a lot of land, having one or more buildings thereon not exceeding $1,000 in value, owned and occupied as a residence by a householder having a family. The statutes of the state in question should be consulted when preparing the schedule of exempt property.

Receivership Accounting

16. Nature of Receiverships

Receiverships may or may not be an incident in the history of a corporation which has become financially embarrassed. A company may experience difficulty in meeting its obligations, in fact may for a time be in an insolvent condition, without going into a receivership or coming in any manner under the supervision of the courts. The procedure to be followed depends somewhat upon the attitude of the embarrassed concern's creditors. If the creditors can agree upon a composition of the debts they may be able to tide the business over its difficulties without resorting to bankruptcy laws.

The purpose of a receivership is to place a concern under supervision of a court with a view to preservation of its assets while a new plan of capitalization is being worked out; or else to continue operations until it is ascertained that the concern cannot be put back into satisfactory condition, in

Form 409

Debtor's Petition

Debtor's Petition.

To the Honorable

Judge of the District Court of the United States for the Northern District of Illinois:

The Petition of....., of .....

in the County of....., and.....District and State of Illinois,*.....respectfully represents:

That he has had his principal place of †.....

for the greater portion of six months next immediately preceding the filing of this petition at .....

....., within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefits of the acts of Congress relating to bankruptcy

That the Schedule Hereto Annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts

That the Schedule Hereto Annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore Your Petitioner Prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

.....

.....
Attorney.

United States of America,
Northern District of Illinois,
Eastern Division. } ss.

I,....., the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Subscribed and Sworn to before me this .....day of .....

A. D. 1.....

.....
Petitioner.

.....
(Official Character.)

* State "occupation."
† Here insert "business" or "has resided" or "has had his domicil"

Form 410
Statement of All Debts of Bankrupt

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

FORMS IN BANKRUPTCY,
As adopted and established by the U. S. Supreme Court.

SCHEDULE A. (1)

No. 701
Revised to August 1898
Geo E Cole & Co Chicago
LEGAL BLANKS

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

(FASTEN AT THIS END)

Claims which have priority.	Reference to ledger or voucher.	Names of Creditors	Residence (if unknown that fact must be stated).	Where and when contracted.	Nature and consideration of the debt, and whether contracted as partner or joint-contractor; and if so, with whom.	Amount $	Amount c
1. Taxes and debts due and owing to the United States							
2. Taxes due and owing to the State of ~~_____~~ or to any county, district or municipality thereof.							
3. Wages due workmen, clerks or servants, to an am't not exceeding $600 each, earned within three months before filing the petition.							
4. Other debts having priority by law.							
					Total,		
					Petitioners.		

Form 411

Creditors Holding Securities

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court

SCHEDULE A. (2)

Creditors Holding Securities.

No. 702 Geo. E. Cole & Co. Chicago
Legal Blanks

(H. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint-contractor with any other person; and, if so, with whom.)

	Reference to ledger or voucher.	Names of Creditors.	Residences (if unknown, that fact must be stated).	Description of Securities.	When and Where Debts were Contracted	Value of Securities		Amount of Debts.	
								$	c
					Total.				
					Petitioner.				

Form 412

Creditors Whose Claims are Unsecured

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court.

SCHEDULE A. (3)

Creditors whose claims are unsecured.

NO. 709 GEO E COLE & CO CHICAGO LEGAL BLANKS

(N. B.—When the name and residence (or either) of any drawer, maker endorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

	Reference to ledger or voucher	Names of Creditors.	Residence (if unknown that fact must be stated.)	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.	Amount. $	Amount. c
					Total.		
					Petitioner.		

Form 413

Liabilities on Notes or Bills Discounted, Which Ought to Be Paid by the Drawers, Makers, Acceptors, or Indorsers

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court.

SCHEDULE A. (4)

No. 704 GEO. E. COLE & CO. CHICAGO LEGAL BLANKS

Liabilities on notes or bills discounted, which ought to be paid by the drawers, makers, acceptors or indorsers.

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, or acceptors thereof are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

	Reference to ledger or voucher.	Names of holders as far as known.	Residence (if unknown, that fact must be stated).	Place where contracted.	Nature of liability, whether same was contracted as partner or joint-contractor, or with any other person and, if so, with whom.	Amount $	Amount c.
					Total.		
					Petitioner.		

1100

Form 414
Accommodation Paper

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court

SCHEDULE A. (5)
Accommodation Paper

No 705 GEO E COLE & CO CHICAGO LEGAL BLANKS

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders. If the bankrupt be liable as drawer, maker, acceptor or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.)

	Reference to ledger or voucher	Names of Holders.	Residences (if unknown, that fact must be stated).	Names and Residences of Persons accommodated	Place where contracted.	Whether liability was contracted as partner or joint-contractor, or with any other person; and, if so, with whom.	Amount. $	c.
						Total,		

(FASTEN AT THIS END)

101

United States of America,
District of ..... } ss.

OATH TO SCHEDULE A.

Petitioner.

On this ..... day of ....., A. D. 19....., before me personally came ..... the person ... mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to bankruptcy

Subscribed and sworn to before me this ..... day of ....., A. D. 19.....

.....

.....
(*Official Character*)

Form 415

Statement of All Property of Bankrupt

FORMS IN BANKRUPTCY.
As adopted and established by the U. S. Supreme Court

SCHEDULE B. (1)

STATEMENT OF ALL PROPERTY OF BANKRUPT

Real Estate.

No. 706 Geo. E. Cole & Co. Chicago
LEGAL BLANKS

	Location and description of all Real Estate owned by Debtor, or held by him.	Encumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated Value $	Estimated Value c.
			Total,		
			Petitioner.		

which event liquidation and the winding up of the concern's affairs are in order.

Certain kinds of enterprises, such as municipal, railroad, insurance and banking corporations, cannot become bankrupts under the National Bankruptcy Act; hence receivership naturally follows inability of such concerns to meet their obligations. A receiver may, however, bring bankruptcy proceedings in a federal court if the involved concern is one coming under the jurisdiction of the National Bankruptcy Act.

The receiver occupies a fiduciary position and must keep accurate account of all transactions. He must render such statements to the court as the latter may require.

The word "receiver" is practically synonymous with the

FORM 416

PERSONAL PROPERTY SCHEDULE

FORMS IN BANKRUPTCY. As Adopted and Established by the U. S. Supreme Court. (FASTEN AT THIS END.) No. 707 GEO. E. COLE & CO. CHICAGO LEGAL BLANKS

SCHEDULE B. (2)

Personal Property.

A.—Cash on hand . . . . . .

B.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately)

C.—Stock in trade, in business of at of the value of

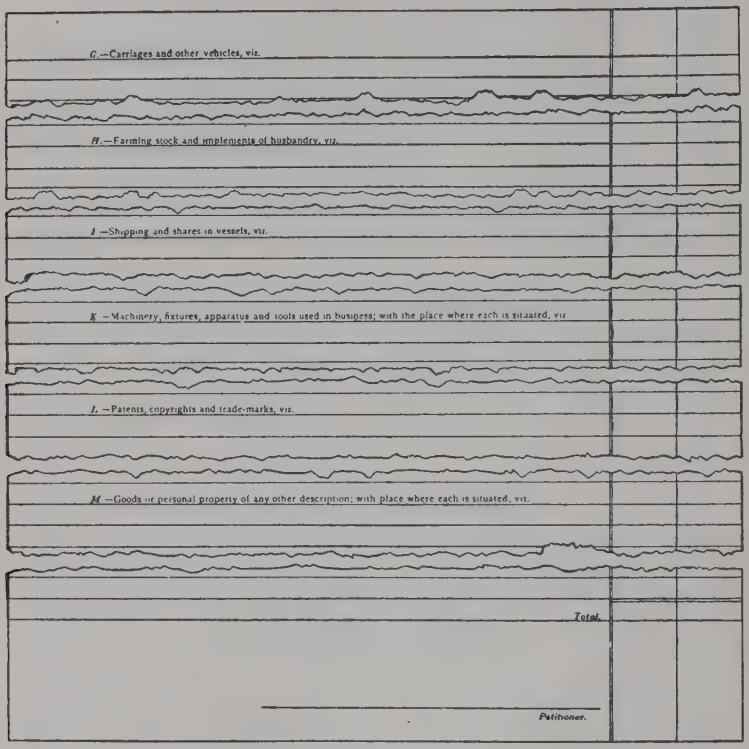
D.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.

E.—Books, prints and pictures, viz.

F.—Horses, cows sheep and other animals (with number of each), viz.:

(OVER)

FORM 416*a*



word "trustee," but narrower in application. A trustee is any person or company entrusted with the care of property belonging to others. A receiver is a trustee appointed by a court to take charge of the estate of a person adjudged bankrupt.

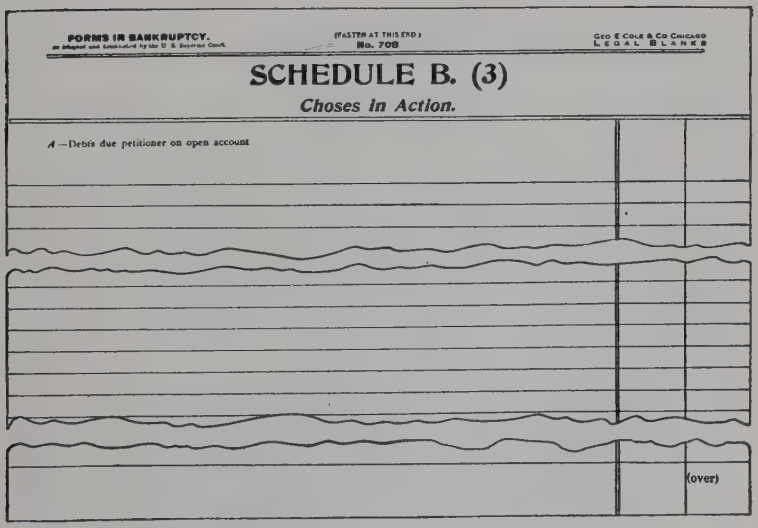
17. Receiver's Accounts

The accounts kept by the receiver may be in such form as he finds convenient; but in reporting to the court he should conform to any requirements that may be laid down. The receiver's accounts should be kept distinct from those of

the company. The accounts of the company may be adjusted to conform with receiver's books at the beginning of the receivership or they may be allowed to remain unchanged until the reorganization has been completed. If the company's accounts are to be kept in harmony with the receiver's accounts it will be necessary at the time the receiver takes charge and enters the assets on his books to make an entry on the company's books charging the receiver for the assets taken over at the agreed upon valuation and crediting the asset accounts. If they are charged to the receiver at less than the book valuation the asset accounts will not be wholly cleared. The balances should be closed into Surplus account, or into Deficit account if no surplus exists. As reports of the receiver's transactions are received, entries are made on the company's books, thus keeping the Receiver's account debit balance on the company's books in

FORM 417

CHOSES IN ACTION SCHEDULE



FORMS IN BANKRUPTCY.
as adopted and established by the U. S. Supreme Court.

(FASTEN AT THIS END)
No. 708

GEO. E. COLE & CO. CHICAGO
LEGAL BLANKS

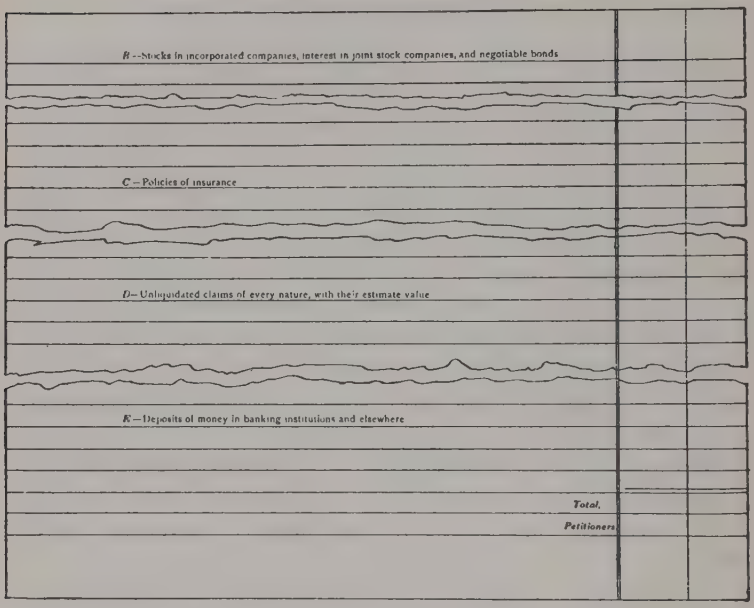
SCHEDULE B. (3)

Choses in Action.

A—Debts due petitioner on open account

(over)

FORM 417*a*



agreement with the Company account's credit balance on the receiver's books.

When the receivership is ended entries are made crediting the receiver with the net amount of assets turned back to the company. If the company's books have not been adjusted to reflect the transactions of the receiver there will be a discrepancy, at this time, between the Company account's balance on the receiver's books and the Receiver's account on the company's books. This should be carried to Surplus account.

18. Appraisal and Statement of Affairs

The first duty of the receiver is to make an inventory of the company's assets. This he does on conservative lines, so that in case liquidation becomes necessary his losses will

not appear unduly large. The statement of affairs is not a report to the court and in some instances may not be neces-

Form 418

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor, or Subject to Any Power or Right to Dispose of or to Charge

FORMS IN BANKRUPTCY, AS ADOPTED AND ESTABLISHED BY THE U. S. SUPREME COURT. (FASTEN AT THIS END.) No. 709. GEO E COLE & CO CHICAGO LEGAL BLANKS

SCHEDULE B. (4)

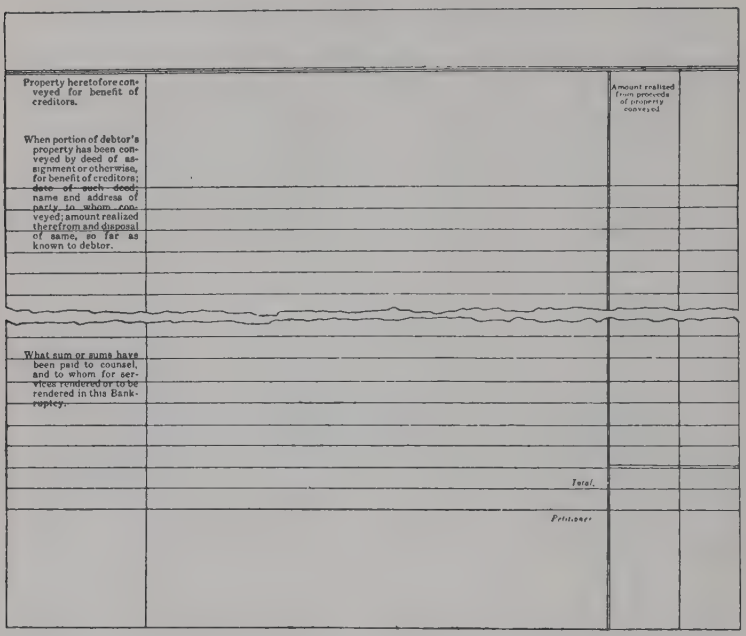
Property in reversion, remainder or expectancy, including property held in trust for the debtor, or subject to any power or right to dispose of or to charge.

(B. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.

General Interest.	Particular Description.	Supposed Value of my Interest.	
		$	c.
Interest in land			
Personal Property			
Property in money, stock, shares, bonds, annuities, etc., etc.			
Rights and powers Legacies and bequests			
	Total,		

(OVER

FORM 418*a*



Property heretofore conveyed for benefit of creditors.		Amount realized from proceeds of property conveyed	
When portion of debtor's property has been conveyed by deed of assignment or otherwise, for benefit of creditors; ~~date of such deed;~~ name and address of party to whom conveyed; amount realized therefrom and disposal of same, so far as known to debtor.			
What sum or sums have been paid to counsel, and to whom for services rendered or to be rendered in this Bankruptcy.			
	Total.		
	Petitioner		

sary. For example, if liquidation is improbable, or impossible as in case of railroad companies, the receiver might decide to take over all assets at their book value, in which case no adjustment would be necessary in the company's Surplus account, such as that mentioned above.

When, however, an appraisal is made it is usually desirable to reflect the results in certain formal statements, viz., the

1. Statement of affairs, and
2. Deficiency account.

Both of these statements should be set up in such form as will best meet the requirements in the case at issue.

The statement of affairs, while resembling a balance sheet in some respects, differs therefrom in that it emphasizes liquidation values instead of going concern values and is devised to show secured liabilities deducted from the assets

Form 419

A Particular Statement of Property Claimed as Exempted from the Operation of the Acts of Congress Relating to Bankruptcy

FORMS IN BANKRUPTCY. As Adopted and Established by the U. S. Supreme Court. (FASTEN AT THIS END.) No. 710. Geo. E. Cole & Co. Chicago. LEGAL BLANKS

SCHEDULE B. (5)

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description and present use.

		Valuation. $	c.
Military uniforms, arms and equipments.			
Property claimed to be exempted by state laws, its valuation, whether real or personal; its description and present use; and reference given to the statute of the state creating the exemption.	The petitioner states that he is the head of a family consisting of (1)_____ and resides with the same in the _____ of _____ County of _____ and State of Illinois, and that the following personal property is hereby claimed to be exempt under and by virtue of an act of the General Assembly of the State of Illinois, entitled, "An Act to exempt personal property from attachment and sale on execution, and from distress for rent," approved May 24, 1877, in force July 1, 1877, and all amendments thereto.		
	The following Real Estate is also claimed to be exempt under and by virtue of an act of the General Assembly of the State of Illinois, entitled "An Act to amend an Act, entitled, 'An Act to exempt the homestead from forced sale, and to provide for setting off the same, etc.,'" approved April 30, 1873, in force July 1, 1873, and amendments thereto. Used as a residence by petitioner and family.		
	Total		
	Petitioner.		

(1) State according to facts

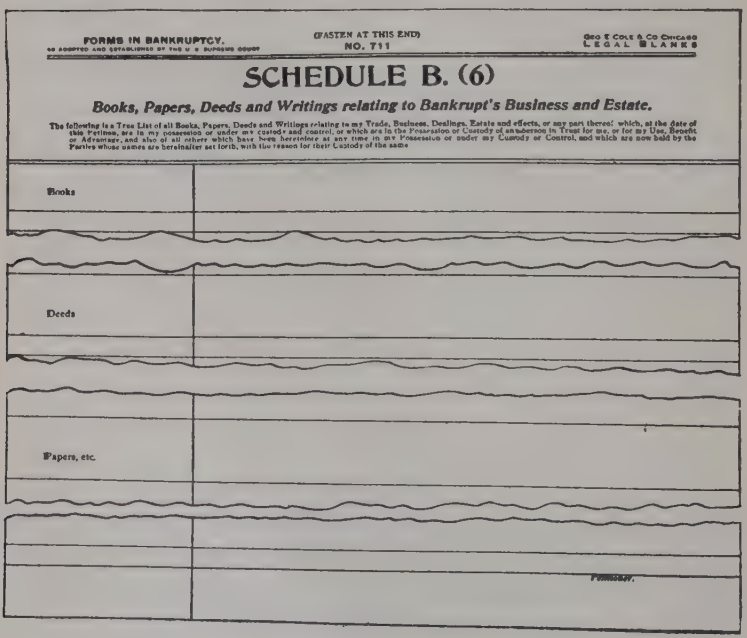
which secure them. By following this arrangement the net free assets are shown available for liquidation of unsecured liabilities, the excess of unsecured liabilities over net free assets representing the deficiency; or, if the net free assets exceed the unsecured debts, the difference is surplus.

In preparing a statement of affairs all available sources of information should be used. The construction of the statement is an accountant's work. Valuation is primarily an engineer's work. Legal matters may necessitate the attention of an attorney.

The deficiency account summarizes the estimated shrinkages resulting from the appraisal and shows how these and losses from operations affect the company's net worth. The estimated shrinkages are shown on the debit side. The manner in which these losses and shrinkages affect net worth and the interests of creditors is shown on the credit side of the deficiency account. This may show the entire net worth plus a part of creditors' equity wiped out. This estimated

FORM 420

BOOKS, PAPERS, DEEDS AND WRITINGS RELATING TO BANKRUPT'S BUSINESS AND ESTATE



FORMS IN BANKRUPTCY. (FASTEN AT THIS END) NO. 711 GEO. E. COLE & CO. CHICAGO LEGAL BLANKS

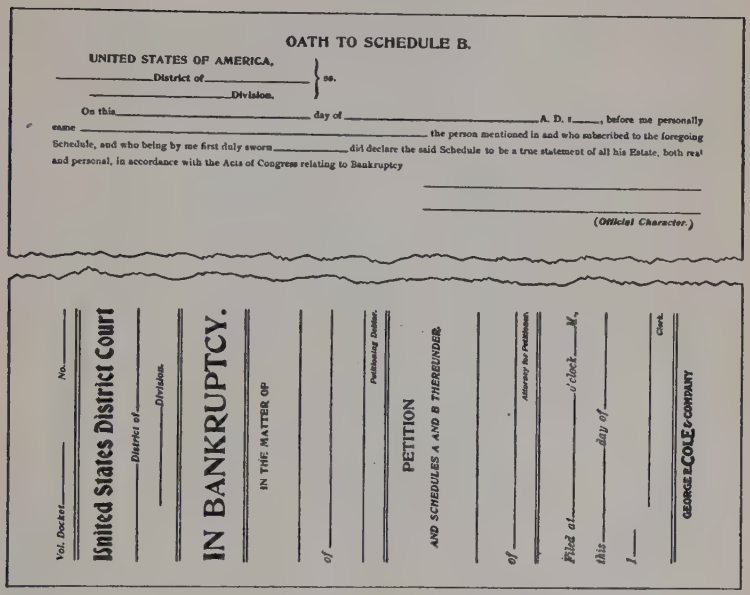
SCHEDULE B. (6)

Books, Papers, Deeds and Writings relating to Bankrupt's Business and Estate.

The following is a True List of all Books, Papers, Deeds and Writings relating to my Trade, Business, Dealings, Estate and effects, or any part thereof, which, at the date of this Petition, are in my possession or under my control and control, or which are in the Possession or Custody of any person in Trust for me, or for my Use, Benefit or Advantage, and also of all others which have been heretofore at any time in my Possession or under my Custody or Control, and which are now held by the Parties whose names are hereinafter set forth, with the reason for their Custody of the same

Books	
Deeds	
Papers, etc.	
	Petitioner.

FORM 420*a*



OATH TO SCHEDULE B.

UNITED STATES OF AMERICA,
_____ District of _____ } ss.
_____ Division.

On this _____ day of _____ A. D. 1____, before me personally came _____ the person mentioned in and who subscribed to the foregoing Schedule, and who being by me first duly sworn _____ did declare the said Schedule to be a true statement of all his Estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy

_____
_____
(*Official Character.*)

Vol. Docket _____ No. _____

United States District Court

_____ District of _____ Division.

IN BANKRUPTCY.

IN THE MATTER OF

_____ of _____

Petitioning Debtor

PETITION

AND SCHEDULES A AND B THEREUNDER.

_____ of _____

Attorney for Petitioner

Filed at _____ o'clock ____ M., this _____ day of _____ 1____

_____ Clerk.

GEORGE E. COLE & COMPANY

FORM 421

SUMMARY OF DEBTS AND ASSETS

[FROM THE STATEMENTS OF THE BANKRUPT IN SCHEDULES A AND B.]

Schedule A	1 (1)	Taxes and debts due United States
" "	1	Taxes due states, counties, districts, municipalities
" "	1 (3)	Wages
" "	1 (4)	Other debts preferred by law
Schedule A	2	Secured claims
Schedule A	3	Unsecured claims
Schedule A	4	Notes and bills which ought to be paid by other parties thereto
Schedule A	5	Accommodation paper
		Schedule A, total

Schedule B	1	Real estate
" "	2–a	Cash on hand
" "	2–b	Bills, promissory notes and securities
" "	2–c	Stock in trade
" "	2–d	Household goods, etc.
" "	2–e	Books, prints and pictures
" "	2–f	Horses, cows and other animals
" "	2–g	Carriages and other vehicles
" "	2–h	Farming stock and implements
" "	2–i	Shipping and shares in vessels
" "	2–k	Machinery, tools, etc.
" "	2–l	Patents, copyrights and trade-marks
" "	2–m	Other personal property
Schedule B	3–a	Debts due on open accounts
" "	3–b	Stocks, negotiable bonds, etc.
" "	3–c	Policies of insurance
" "	3–d	Unliquidated claims
" "	3–e	Deposits of money in banks and elsewhere
Schedule B	4	Property in reversion, remainder, trust, etc.
Schedule B	5	Property claimed to be excepted
Schedule B	6	Books, deeds and papers
		Schedule B, total

loss which creditors must sustain is the amount of the deficiency shown in the statement of affairs brought into the credit side of the deficiency account.

The order and arrangement of assets and debts in the statement of affairs varies with the circumstances, but the following rules may be of assistance:

1. Deduct secured debts from the appraised value of assets pledged as security.

2. Deduct the appraised value of pledged assets from debts which they secure.

3. The excess of the appraised value of pledged assets plus the appraised value of assets not pledged should be shown as free assets available for payment of unsecured debts.

As to the order of payment, debts are preferred, fully secured, partially secured, and unsecured.

Preferred debts are those which must be paid before any payment can be made on unsecured debts. Taxes and wages are illustrations.

Form 422

Company X

Statement of Affairs, July 1, 19....

Book Value		Expected to Realize		Liabilities		Expected to Rank
	Assets Not Pledged:				*Preferred Creditors:*	
$ 5,000.00	Cash		$ 5,000.00	$ 400.00	Wages (Deducted Contra) $ 400.00	
50,000.00	Accounts Receivable					
	Good $ 40,000.00	40,000.00			*Fully Secured Creditors:*	
	Doubtful 6,000.00	4,000.00		50,000.00	Mortgage (Deducted Contra) $ 50,000.00	
	Bad 4,000.00					
		$50,000.00			*Partial Secured Creditors:*	
40,400.00	Inventories	23,000.00		50,000.00	Chattel Mortgage $ 50,000.00	
	Assets Pledged:				Deduct—Security (Contra) 25,000.00	$ 25,000.00
30,000.00	Inventories $ 25,000.00					
	Less — Chattel Mortgage				*Unsecured Creditors:*	
	(Contra) 25,000.00			60,000.00	Accounts Payable $ 60,000.00	
				165,000.00	Notes Payable 165,000.00	$225,000.00
280,000.00	Land and Buildings $170,000.00					
20,000.00	Equipment 15,000.00			$325,400.00	Total unsecured creditors	$250,000.00
	Deduct Fully Secured $185,000.00					$250,000.00
	Mortgage (Contra) 50,000.00					
					Deficiency to Creditors—	
	Excess of Pledged Assets	135,000.00			brought down	43,400.00
				100,000.00	Capital Stock and Surplus	100,000.00
	Free Assets: $207,000.00					
	Deduct Preferred Creditors (Contra) 400.00					
	Assets Available for Unsecured Debts $206,600.00					
	Deficiency to Creditors—carried down 43,400.00					
		$250,000.00				
	Deficiency of Stockholders	143,400.00				
$425,400.00		$143,400.00		$425,400.00		$143,000.00

Fully secured debts are those for the liquidation of which sufficient assets are pledged.

Partially secured debts are those for the liquidation of which assets are pledged but not sufficient to pay them in full.

Form 422 is illustrative of the statement of affairs.

COMPANY X

DEFICIENCY ACCOUNT, JULY 1, 19....

Estimated Shrinkage of Asset Values:		Capital Stock and Surplus	$100,000.00
Accounts Receivable	$ 6,000.00		
Inventories	22,400.00		
Land and Buildings	110,000.00		
Equipment	5,000.00	Deficiency to Creditors	43,400.00
	$143,400.00		$143,400.00

19. Entries on Receiver's Books

The receiver takes the assets of the corporation on his books at their appraised value, the credit being to the corporation. Thus, for the items shown in the statement of affairs in Form 422, the receiver's opening entry is as follows:

July 1, 19....

Cash	$ 5,000	
Accounts Receivable	50,000	
Inventories	70,400	
Land and buildings	280,000	
Equipment	20,000	
To Company X Equity		$419,400
Reserve for Accounts Receivable		6,000
To bring assets of Company X, in receivership, on books of receiver in accordance with court decree.		

Note that the liabilities are not brought upon the receiver's books. If these are liquidated they are entered as paid, the credit being to Cash account and the debit to Company X Equity account. Thus if accounts payable amounting to $1,000 are paid the entry is:

Company X Equity	$1,000	
To Cash		$1,000

If the company's books are adjusted to agree with the receiver's books, the entry at the time the receiver takes over the assets is:

Receiver	$419,400	
Reserve for Accounts Receivable	6,000	
To Cash		$ 5,000
Accounts Receivable		50,000
Inventories		70,400
Land and Buildings		280,000
Equipment		20,000
To charge receiver with appraised value of assets taken over at their appraised values.		

Since some of the assets are taken over by the receiver at less than their book values, the balances remaining in the asset accounts represent surplus adjustments. These may be closed into Surplus account at once or allowed to stand until the end of the receivership, according to circumstances. When $1,000 accounts payable is paid off by the receiver, as shown above, the entry on the company's books is:

Accounts Payable	$1,000	
To Receiver		$1,000

As stated, the company's accounts may not be kept in agreement with the receiver's accounts, necessary adjustments being made at the close of the receivership. Here again circumstances must be permitted to determine the best plan of procedure.

Claims may be allowed by the receiver without being paid immediately, in which event he may make entry thus:

Company X Equity	$.....	
To Claims Allowed		$.....

When these claims are paid Cash account is credited and Claims Allowed account charged.

The receiver makes such entries on his books as may be necessary to adequately control the business which he takes

over. He may open as many expense accounts as are necessary. By keeping his own books coordinated with the books of the company he may permit details of operations to be taken care of as usual through the company's system of accounts, bringing into his own books only matters essential to carrying on the work of receiver. The Company X Equity account on the receiver's books and the Receiver's account on the company's books resemble the Branch Office account and Home Office account on the books of home office and branch office, respectively; and, just as much or little of the accounting details as may be transferred to the accounting system of the branch, so much or little of the accounting details may be transferred to the receiver's accounts. It is possible that the receiver may find it undesirable to set up a system of accounts of his own, merely taking over the supervision of the company's accounts which continue to be operated as usual by the company's accounting staff. If the receivership is followed by reorganization the routine accounting for revenues, expenses and costs is not likely to be interfered with, the reorganization procedure consisting primarily in a reconstruction of the capital structure of the company.

20. Receiver's Trial Balance and Closing Entries

Assuming that the receiver does keep accounts in some detail the following trial balance illustrates some of the items that might be found in practice:

TRIAL BALANCE, AUGUST 31, 19....

Cash	$ 6,000	
Accounts Receivable	45,000	
Inventory (old)	60,000	
Land and Buildings	280,000	
Equipment	20,000	
Company X Equity		$ 390,000
Reserve for Accounts Receivable		6,000
Notes Receivable	25,000	
Claims Allowed		100,000
Purchases	500,000	
Sales		600,000

Expenses of Receiver	10,000	
Operating Expenses	170,000	
Interest	6,000	
Receiver's Certificates		26,000
	$1,122,000	$1,122,000

The inventory as at August 31, 19.., is $65,000.

Entries close books as of date of above trial balance:

Profit and Loss	$ 60,000	
To Inventory		$ 60,000
To close old inventory to Profit and Loss account		
Inventory	$ 65,000	
To Profit and Loss		$ 65,000
To bring new inventory into the books.		
Sales	$600,000	
To Profit and Loss		$600,000
To Close		
Profit and Loss	$686,000	
To Purchases		$500,000
Expenses of Receiver		10,000
Operating Expenses		170,000
Interest		6,000
To close		
Company X Equity	$ 81,000	
To Profit and Loss		$ 81,000
To carry net loss for period to Company X Equity account.		

The trial balance after closing is as follows:

FINAL TRIAL BALANCE, AUGUST 31, 19....

Cash	$ 6,000	
Accounts Receivable	45,000	
Inventory (new)	65,000	
Land and Buildings	280,000	
Equipment	20,000	
Company X Equity		$309,000
Reserve for Accounts Receivable		6,000
Notes Receivable	25,000	
Claims Allowed		100,000
Receiver's Certificates		26,000
	$441,000	$441,000

If the company's books are adjusted to agree with the receiver's books, the following entry is in order in them:

Surplus	$81,000	
To Receiver		$81,000
To record net loss for period ended Aug. 31, 19.., as reported by receiver.		

21. Receiver's Report to Court

The receiver makes such reports to the court as are required. The purpose of these statements is to supply the court with such information as may be required in determining what further action may be needed relative to the receivership. It is the court's desire to terminate the receivership as soon as it may be done without injury to the various interests involved. Receiverships are undertaken to prevent destructive proceedings on the part of dissatisfied creditors and to take such steps relative to the reorganization of the capital structure as may be necessary to put the concern on a sound basis, or else to wind up its affairs to the greatest common benefit of the parties concerned. The sooner this can be accomplished the better, but sometimes receiverships last for years.

The court usually appoints an auditor to review the receiver's accounts. The form of the receiver's report varies with the requirements. It usually takes the form of a charge and discharge statement, accompanied by supplementary schedules and exhibits as well as such other information as the court may demand.

COMPANY X

RECEIVER'S FIRST AND FINAL ACCOUNTING

AUGUST 31, 19...

CHARGES

The Receiver Charges Himself with:	
Assets Taken Over July 1, as follows:	
Cash	$ 5,000
Accounts Receivable	44,000
Inventory of Merchandise	70,400

Land and Buildings	280,000	
Equipment	20,000	
Total		$419,400
Assets Increased by Receiver:		
Increase in Cash	$ 1,000	
Increase in Notes Receivable	25,000	
Total		26,000
Total Charges		$445,400
CREDITS		
The Receiver Credits Himself with:		
Claims Allowed but Not Paid	$100,000	
Receivers' Certificates Issued	26,000	
Decrease in Accounts Receivable	5,000	
Decrease in Inventory	5,400	
Total Credits		$136,400
Receiver's Remaining Accountability		$309,000

Such supplementary schedules should accompany this statement as are necessary to supply any information the court may require.

22. Ending the Receivership in Case of Reorganization

In case of reorganization the receivership is brought to a close whenever the court deems it proper to discontinue its supervision. This will ordinarily be when the capital structure has been sufficiently improved to permit the company to meet its fixed charges and to continue operations with reasonable prospects of success. At this time it is necessary to make an entry on the company's books charging the various asset accounts for the amounts shown on the receiver's records, crediting the receiver, and also crediting any liabilities incurred by the receiver which the company now assumes.

If the receivership of Company X is ended as at August 31, 19..., the entry on the books of Company X, derived from the final trial balance shown in the preceding section, is as follows:

Cash	$ 6,000	
Accounts Receivable	45,000	

Inventory	65,000	
Land and Buildings	280,000	
Equipment	20,000	
Notes Receivable	25,000	
To Receiver		$309,000
Reserve for Accounts Receivable		6,000
Claims Allowed		100,000
Receiver's Certificates		26,000
To transfer accounts kept on receiver's books to books of Company X, by order of court.		

At this time any unadjusted balances remaining on the company's books from pre-receivership days should be adjusted through the surplus account, so that only the account balances remaining at the close of the receivership may appear.

Reorganization adjustments resulting from revamping of the capital structure may be made either before or after the accounts are transferred back to the company's books, but preferably afterwards, since the reorganization is the outgrowth of the receivership rather than a part of it.

Should the receiver decide to continue the accounting procedure, not by opening a separate set of books, but by employing the system and books of account in use by the company, the Capital Stock account and Surplus and Deficit account should be closed into an account representing the company's equity, as, for example, Company X Equity account.

23. Receivership and Sale

Receivership sometimes culminates in a sale of the company's property. This is true where it is deemed advisable to organize a new company to take over the business of the old company; also when it is found impossible to continue the business and liquidation of its assets is decided upon.

If a new company is organized, it purchases the assets and assumes the debts of the old company, its capital stock being issued to the stockholders of the old company in payment.

Thus the owners of the old company become the owners of the new company.

If liquidation of assets is decided on, profits and losses on sales of assets will be carried to a Profit and Loss on Liquidation account. Any money remaining after all debts and expenses are paid is distributed to the outstanding stock on a pro rata basis.

24. Realization and Liquidation Account

Sometimes, instead of retaining the asset and liability accounts on the books when liquidation is to be effected, a Realization and Liquidation account is opened and all balances of asset and liability accounts are closed into it, with the possible exception of cash, which is a realized account. Then as assets are liquidated this account is credited and as liabilities are paid this account is charged. If this is the plan followed the subordinate accounts receivable and payable ledgers should be continued, the totals or balances carried to Realization and Liquidation account continuing to serve as controls.

Expenses paid by the trustee are charged to Realization and Liquidation account.

When all debts are paid and all assets liquidated the balance remaining in the Realization and Liquidation account represents either loss or gain on realization and should be closed into Capital account. The debit balance in Cash account now equals the credit balance in Capital account, and the two accounts are closed by distributing the cash balance to stockholders.

To illustrate, assume that the balance sheet of Company X at date liquidation is decided upon is as follows:

Cash	$ 6,000	
Accounts Receivable	45,000	
Inventory	65,000	
Land and Buildings	280,000	
Equipment	20,000	
Capital Account		$309,000
Reserve for Accounts Receivable		6,000

Notes Receivable	25,000	
Accounts Payable		126,000
	$441,000	$441,000

The following entries are made to transfer assets (excepting Cash account) and debts (excepting Capital account) to Realization and Liquidation account.

Realization and Liquidation	$429,000	
To Accounts Receivable (net)		$ 39,000
Inventory		65,000
Land and Buildings		280,000
Equipment		20,000
Notes Receivable		25,000
Accounts Payable	$126,000	
To Realization and Liquidation		126,000

The various accounts having open balances now appear as follows:

REALIZATION AND LIQUIDATION

Accounts Receivable	$ 39,000	Accounts Payable	$126,000
Inventory	65,000	Balance	303,000
Land and Buildings	280,000		
Equipment	20,000		
Notes Receivable	25,000		
	$429,000		$429,000
Balance	$303,000		

CASH

Sundries	$ 6,000

CAPITAL

Sundries	$309,000

The trial balance now is as follows:

Realization and Liquidation	$303,000	
Cash	6,000	
Capital		$309,000
	$309,000	$309,000

When assets are realized upon, Cash account is charged and Realization and Liquidation account credited. When

debts or expenses are paid, Cash account is credited and Realization and Liquidation account charged.

Assuming that the assets in the above trial balance realize the following sums: accounts receivable, $35,000; inventory, $40,000; land and buildings, $200,000; equipment, $5,000; and notes receivable, $20,000; that the receiver's expenses amount to $5,000; and that all debts are paid in full, these transactions are summarized below:

Cash	$300,000	
To Realization and Liquidation		$300,000
For assets realized as follows: (Detailed statement)		
Realization and Liquidation	$ 5,000	
To Cash		$ 5,000
For expenses.		
Realization and Liquidation	$126,000	
To Cash		$126,000
For liabilities paid.		

The Realization and Liquidation account now appears as follows:

REALIZATION AND LIQUIDATION

Accounts Receivable	$ 39,000	Accounts Payable	$126,000
Inventory	65,000	Balance	303,000
Land and Buildings	280,000		$429,000
Equipment	20,000		
Notes Receivable	25,000	Accounts Receivable	$ 35,000
	$429,000	Inventory	40,000
		Land and Buildings	200,000
Balance	$303,000	Equipment	5,000
Accounts Payable	126,000	Notes Receivable	20,000
Expenses	5,000	Capital Account— Loss on Realization	134,000
	$434,000		$434,000

The loss on realization consists of the following shrinkages in asset values:

Accounts receivable	$ 4,000
Inventory	25,000
Land and Buildings	80,000
Equipment	15,000

Notes Receivable	5,000	
	$129,000	
Expenses	5,000	
	$134,000	

The trial balance now stands thus:

Cash	$175,000	
Capital		$175,000
	$175,000	$175,000

25. Legal Formalities at Time of Dissolution

The requirements of state laws as to dissolution must be complied with. Forms 423, 424 and 425, required in Connecticut, are illustrative.

The following form is prescribed by the Secretary of State of Connecticut when all stockholders agree upon a dissolution. The filing fee for this form is $2.00.

FORM 423

PRELIMINARY CERTIFICATE OF DISSOLUTION (CONNECTICUT)

We, the Undersigned, a majority of the directors of The .....a corporation organized under the statute laws of the State of Connecticut and located in the town of ..... county of ..... in said state,

Hereby Certify, that every stockholder of said corporation has signed and acknowledged an agreement that the corporate existence of such corporation shall be terminated, which instrument is dated the ..... day of .....192....

All claims against said corporation may be sent to.....

.....

P. O. Address .....

Dated at.....this.....day of.....192....

.....
.....
.....
.....
.....

A Majority of the Directors.

STATE OF CONNECTICUT, }
COUNTY OF } ss. .....192....

Personally appeared .....
..... being a majority of the directors of The.....
and made oath to the truth of the foregoing certificate by them signed, before me,

Notary Public.
.....*Justice of the Peace.*
Commissioner of the Superior Court.

The following form is prescribed by the Secretary of State of Connecticut when less than all but more than three-fourths of the stock of each class is in favor of dissolution. The filing fee for this form is $2.00.

FORM 424

PRELIMINARY CERTIFICATE OF DISSOLUTION (CONNECTICUT)

We, the Undersigned, a majority of the directors of The .....a corporation organized under the statute laws of the State of Connecticut, and located in the town of.....county of..... in said state,

Hereby Certify, that at a meeting of the directors of said corporation, held at.....on the....day of.....19.., it was voted to terminate its corporate existence.

That a special meeting of the stockholders was forthwith called to be held thirty days thereafter, to wit: on the.....day of .....19....

That the call for said meeting contained a copy of said vote, and was published four times, once during each week preceding such meeting, in the.....a newspaper published in .....and having a circulation in the town where said corporation is located, and a copy thereof was sent by mail to the last known address of each stockholder.

At said stockholders' meeting, there being represented in person or by proxy.....shares of common stock and..... shares of preferred stock, it was voted to confirm said vote of the directors, the number of shares of common stock voting therefor being....., and the number of shares of preferred stock

voting therefor being....., and each being three-fourths or more of the whole of each class of stock.

All claims against said corporation may be sent to.....

Dated at.....this....day of.....19....

.....
.....
.....
.....
.....
A Majority of the Directors.

STATE OF CONNECTICUT, }
COUNTY OF } ss. .....19....

Personally appeared .....
..... being a majority of the directors of The.....
and made oath to the truth of the foregoing certificate by them signed, before me,

Notary Public.
.....*Justice of the Peace.*

FORM 425

FINAL CERTIFICATE OF DISSOLUTION (CONNECTICUT)

(The filing fee for this form is $2.00.)

We, the Undersigned, a majority of the directors of The .....a corporation organized under the statute laws of the State of Connecticut, and located in the town of.....in said State, acting herein as trustees to close up the business of said corporation under the provisions of said statute laws;

Hereby Certify that we have completed our duties as prescribed by section 3447 Revision of 1918, in winding up the affairs of said corporation, and have sold or collected all of its assets, and have distributed the same in the manner following:

Dated at.....this.....day of.....19....

.....
.....
.....
.....
.....
A Majority of the Directors acting as Trustees.

STATE OF CONNECTICUT, }
COUNTY OF } ss. .....19....

Personally appeared .....
..... being a majority of the directors, acting as trustees, of The.....
and made oath to the truth of the foregoing certificate by them signed, before me.

Notary Public.
.....*Justice of the Peace.*

XXX

CORPORATE REORGANIZATIONS

1. Reasons for Reorganization

The reasons for a reorganization, in a broad sense, vary from the need of additional funds to the need of a complete revamping of the financial structure. Mere growth may necessitate the authorization of additional capital stock and a corresponding revision of the capital structure. Usually, however, reorganization is thought of as a reconstruction of the capital structure of a company made necessary by financial difficulty, such as inability to meet interest charges or failure to conserve sufficient working capital to enable the company to meet liabilities as they fall due.

In fact, the causes of reorganization are as many as are the reorganizations. Nevertheless the causes of financial embarrassment or failure may be classified with some degree of accuracy. Among them are:

1. Incompetence
2. Competition
3. Lack of capital

Under incompetence may probably be grouped the chief causes of failure, ranging from general failure to understand the requirements of the business to failure to manage properly some single but important aspect of the business. Poor management may lead to the undertaking of unsuccessful ventures, the continuance of departments which are by their nature losing ventures, the neglect to take adequate steps to collect outstanding accounts, the tying up of excessive amounts of money in fixed assets, the failure to establish an adequate organization for distribution and marketing of products, the accumulation of a floating debt where bonds

or stock should have been issued instead, the failure to cultivate needed lines of bank credit, and so on.

Competition is usually beneficial, but when it becomes cutthroat in character it leads to excessive price cutting and the failure of the weaker competitors.

Lack of capital usually results in inability of a company to meet current obligations, to failure to take advantage of discounts offered for prompt payment, and to the borrowing of funds under disadvantageous circumstances.

2. Scope of Remedial Measures

In a given instance, the financial embarrassment having been recognized, it becomes necessary to devise means for remedying the situation. These may vary from simple arrangements voluntarily entered into, to drastic reorganization measures effected under the supervision of a receiver. An illustration of the former, or mild type of reorganization plan is the refunding plan of the St. Louis and San Francisco Railroad Company whereby it issued $100,000,000 in consolidated mortgage bonds and $49,175,000 in preferred stock, with a view to paying off various debts of its own and subsidiary companies, substantially reducing its interest charges, simplifying its capital structure, reducing its debt, and increasing the amount of stock outstanding. This might not be termed a reorganization in the strict sense, yet it has the same general object as plans of reorganization of the drastic type, viz., scaling down of fixed charges and simplification of the capital structure.

3. Reorganization Illustrated

The Central Leather Company was organized in 1905 as successor to another company. During the war period and period of inflation following the war this company made satisfactory profits. At the end of the year 1919 the company had an inventory valued at $75,000,000. This shrank greatly in 1920, and sales dropped off 40 per cent

in the same year. These, with an $8,000,000 reduction in property account, resulted in a reduction of surplus from $30,500,000 as at December 31, 1919, to $4,800,000 as at December 31, 1920. In 1921 there occurred a further drop of 30 per cent in sales as well as large inventory losses, resulting in a net loss for the year of $11,700,000. For the first time in its history the company was compelled to suspend dividends on its preferred stock. In 1922 there was temporary improvement, net earnings amounting to $1,500,000; but 1923 and 1924 witnessed annual deficits of $7,272,000 and $484,000, respectively. The revenue figures for the ten year period ending December 31, 1926, including earnings and dividends per share and surplus each year, were as follows, as published in the *Chicago Journal of Commerce*, Apr. 3, 1928:

Year ended Dec. 31	Gross sales	Net income	Earned a share Pfd.	Earned a share Com.	Paid a share Pfd.	Paid a share Com.	Surplus for the year
1926...	*.....	$ 534,909	$ 1.61	....	....	....	$ 534,909
1925...	41,122,551	1,465,076	4.40	....	....	....	1,465,076
1924...	41,483,792	‡ 484,307	‡ 1.45	....	....	....	‡ 484,307
1923...	52,826,919	‡ 7,272,234	‡21.84	....	....	....	‡ 7,272,243
1922...	55,249,114	1,528,209	4.58	....	....	....	1,528,209
1921...	43,189,552	‡11,068,694	‡33.24	....	1.75	....	‡11,651,426
1920...	66,225,552	‡22,428,213	‡67.35	....	7.00	2.50	‡25,751,666
1919...	118,959,634	14,288,481	42.91	30.12	7.00	†9.00	8,384,470
1918...	94,147,418	6,476,435	19.45	10.44	7.00	†7.00	1,366,442
1917...	91,731,548	14,404,854	43.26	30.42	7.00	†9.00	8,500,841

*Not available. †Includes 4 per cent extra in 1927, 2 per cent extra in 1928, and 4 per cent extra in 1919. ‡Deficit.

At the end of 1926 the company's deficit amounted to $18,520,064 and accrued dividends on its preferred stock amounted to $12,000,000, in round numbers. Although working capital was reduced from $88,704,000 at the end of 1919 to $36,080,000 at the end of 1926, it was not severely impaired. Nevertheless the necessity of some sort of reorganization was felt.

In June, 1927, the United States Leather Company being organized to supersede the Central Leather Company, the following recapitalization plan was adopted to effect the reorganization:

	Central Leather Company	United States Leather Company
First lien 6's of 1945	$13,199,000	$13,199,000
7 per cent cumulative preferred, par $100	33,299,050	
7 per cent cumulative prior preference, par $100		16,649,525
"A" stock, participating and convertible $4 non-cumulative, no par		249,743 shares
Common stock, par $100	39,701,030	
Common stock, no par		397,010 shares

The bonds were not disturbed but have since been retired. For each share of 7% cumulative preferred stock of the old company there was given in exchange ½ share of 7% prior preference stock, ¾ share of class A participating and convertible stock, and $5 in cash. The common stock of the old company was exchanged, share for share, for common stock of the new company. The new shares took the form of voting trust certificates, the trust expiring not later than July 1, 1937.

The preferred stockholders surrendered claim to dividends in arrears, but received in exchange stock offering the possibility of $8 dividends instead of $7 paid on the old stock. The reduction of prior claims on earnings by about $170,000 and the elimination of the preferred dividends in arrears were beneficial to the common stock.

With the elimination of funded debt and of dividends in arrears the company now faces the future with prospects of success greatly improved. The economic status of the leather business has been enhanced by the recent advance in prices. For several years consumption of leather has exceeded production, thus reducing surplus stocks.

This reorganization was carried out voluntarily without the intervention of a receiver.

Another illustration of a mild form of reorganization is the case of the Hartman Corporation. Extension of the business required the conservation of the company's cash resources, and arrangements were made whereby cash divi-

dends were for a time displaced by stock dividends. This was done by action of the stockholders on July 15, 1926, whereby the certificate of incorporation was amended so that in lieu of the existing capitalization of 400,000 shares of non par value stock, there were authorized 200,000 shares of Class A stock and 400,000 shares of class B stock. The class B stock was issued share for share in exchange for the outstanding common stock.

The board of directors then authorized the issuance of 40,000 shares of class A as a stock dividend upon the class B stock, as follows: September 1, 1926, to stockholders of record of August 27, 1926; December 1, 1926, to stockholders of record of November 17, 1926; March 1, 1927, to stockholders of record of February 15, 1927; June 1, 1927, to stockholders of record of May 17, 1927.

The company began paying dividends at once on the class A stock at the rate of $2.00 per year, and on March 1, 1928, cash dividends at the rate of $1.20 per year were resumed on the class B stock, the management declaring that this early resumption of cash dividends was made possible by the favorable working capital status of the company.

4. Receivership and Reorganization Illustrated

Sometimes a voluntary reorganization is attempted, but unsuccessfully, with the result that receivers must be requested. This experience is illustrated in the reorganization of Wilson & Company.

Wilson & Company is one of the three largest packing concerns in the country. During the World War it carried on a large and profitable business, but suffered severely during the ensuing depression, which was exceptionally severe for the packing industry. In its efforts to readjust its affairs pending the return of normal conditions it was unfortunate, being finally compelled to seek the cooperation of creditors in an effort to effect a voluntary reorganization. An extension of the company's bank debt was arranged and other steps were being taken to adjust the company's affairs,

when these arrangements were interrupted by the unexpected appointment of a receiver in New Jersey at the instance of a small stockholder and without notice to the company. The appointment was contested, but the proceedings in New Jersey interfered with the company's business and disturbed its credit, so that it became necessary to ask for court supervision.

Application was made to the Federal Court and on August 26, 1924, primary receivers were appointed by the District Court of the United States for the Southern District of New York, where the company's home office is located. Auxiliary receivers were appointed in several other jurisdictions.

The following committees were organized:

1. A committee to represent the bank debt, commercial paper and certain other obligations.
2. A committee to represent the Ten-Year Convertible Sinking Fund Six Per Cent Gold Bonds and the Ten-Year Convertible Sinking Fund Seven and One-Half Per Cent Gold Bonds.
3. A committee to represent the preferred stock.
4. A committee to represent the common stock.

Much of the company's business is conducted by subsidiary companies. None of these went into receivership and their affairs were conducted as usual.

The figures employed in the plan described in the following pages are as of August 30, 1924, and are taken from statements as of that date prepared by Price, Waterhouse & Co., certified public accountants.

5. The Plan

The plan begins with a statement of the reorganization committee to the effect that it promulgates "this plan and the accompanying Agreement for the reorganization of Wilson & Co., Inc., and its properties or for the readjustment of the respective interests therein of the creditors, bondholders and stockholders who may become parties to this Plan and said agreement, and for the representation of

such interests in the securities and stocks of the corporation to be organized as hereinafter stated to acquire the properties of the Company or such thereof as the Reorganization Committee shall approve. This Plan and said Agreement are hereinafter collectively referred to as the Plan and Agreement."

It is customary to divide the document which explains the reorganization procedure into two parts, viz., (*a*) the plan of reorganization and (*b*) the agreement in accordance with which the plan is carried out.

The plan for reorganization of Wilson & Co. begins with certain tables setting forth:

1. Obligations of the company and its subsidiary and affiliated companies, as of August 30, 1924. Some of these are indicated as remaining undisturbed, some to be adjusted, under the plan of reorganization. Of the bonded indebtedness the First Mortgage 6% Bonds, due 1941, amounting to $22,896,000 are not disturbed, while two issues of convertible bonds amounting to $13,273,000 and $9,036,000, respectively, are to be adjusted. Other items to be adjusted are bank debts amounting to approximately $26,000,000, and purchase money contracts for stock amounting to approximately $3,300,000. The total debts to be adjusted amount to $51,785,000 and the debts remaining undisturbed to $40,972,000, in round numbers.

The preferred stock of the company, consisting of 100,790 shares of a par value of $100 per share, and the common stock, consisting of 202,219 shares of no par value.

2. Certain details as to the obligations remaining undisturbed under the plan.

3. Certain details as to the obligations to be adjusted under the plan.

6. Method of Procedure

The method of reorganization is next considered, as follows:

"The New Company is to be organized under the laws of such state, having such name, corporate charter and by-laws as the Reorganization Committee may approve. The New Company is to acquire all or such part of the properties of the Company, including bonds, stocks and other securities

and claims belonging to the Company or its Receivers, as the Reorganization Committee shall determine, and is to assume all or such of the obligations of the Company and its Receivers not to be adjusted under the Plan, including contingent obligations in respect of debt of subsidiary and affiliated companies, all as shall be determined by the Reorganization Committee. It is intended that these properties of the Company shall be sold under decrees of the United States District Courts which appointed the Receivers of the Company or otherwise transferred and conveyed by the Company in such manner as the Reorganization Committee shall approve, and that the New Company shall acquire title to such properties and shall be vested with all the rights, privileges and franchises which shall belong to the Company or its Receivers at the time or times of such sales, transfers and conveyances. If the Reorganization Committee shall so determine, however, any of such properties may be acquired upon such terms and conditions as the Reorganization Committee may approve by one or more existing or new subsidiary companies, all of the stock of which (or all except directors' shares) shall be held by the New Company. The Reorganization Committee shall also be empowered to effect such mergers or consolidations of subsidiary or affiliated companies as it may deem advisable and to organize or utilize one or more subsidiary or affiliated companies for the purpose of acquiring or holding any of the properties or securities subject to the reorganization or acquired under the Plan. The Reorganization Committee shall also be empowered to enter into agreements with the several committees representing stock or obligations of or claims against the Company to be adjusted under the Plan, or with holders of such stock, obligations or claims, for the purpose of effecting exchanges or releases of property or securities or other adjustments which may be required by any such committee or any such holders as a condition of their approval and adoption of the Plan."

7. Securities to be Issued

The plan next describes in detail the securities to be issued by the new company, as follows:

1. Five-Year Six Per Cent Gold Notes, $2,500,000 principal amount.

2. $50,000,000 of preferred stock, if of par value, consisting of 500,000 shares of a par value of $100 each; or 500,000 shares, if of no par value, same to be preferred over the Class A and Common stock of the new company both as to dividends and assets. Various details as to dividend rate, cumulation of dividends, etc. are given.

3. Not exceeding 500,000 shares of Class A stock without nominal or par value. Various details are given as to dividend rates, cumulation of dividends, etc.

4. Not exceeding 1,500,000 shares of common stock without nominal or par value.

8. Discretion of Reorganization Committee

The plan next provides, in part, as follows relative to the exercise of discretion by the reorganization committee in exchanging securities of the new company for existing securities of the old company:

The stocks of the New Company provided to be presently issued and delivered under the Plan in exchange or in partial exchange for existing securities or obligations of, or claims against, the Company, in so far as not used in such exchange, may be reserved for that purpose under restrictions to be fixed by the Reorganization Committee; but if, in the judgment of the Reorganization Committee, it will facilitate the execution of the Plan to provide cash for the purposes for which such stocks might otherwise be reserved, said Committee may sell such stocks, in whole or in part, upon such terms and for consideration as it may determine in its discretion. The amounts of the stocks proposed to be issued as herein set forth are estimated and are based upon the approximate amounts of securities, obligations and claims outstanding in the hands of the public as of August 30, 1924, no account being taken of inter-company holdings. The ultimate amount of each class of stock which shall be issued under the Plan will depend upon the extent to which and the manner in which the Reorganization Committee shall exercise the various powers conferred under the Plan, including the power to effect adjustments in respect of,

or to exclude from the Plan, or to modify the provisions of the Plan with respect to, such securities, obligations and/or claims, which the Reorganization Committee may do for any reason deemed by it to be sufficient . . .

9. Treatment of Securities to be Adjusted

The holders of securities to be adjusted under the plan or reorganization, upon compliance with the terms of plan, are to receive stocks of the new company and cash, upon the surrender of their obligations, certificates of stock, and certificates of deposit, as follows:

Bank Debt

1. The $22,721,000, principal amount, of indebtedness of the Company to banks which (disregarding all offsets and claims of offset) had deposits of the Company or of one or more of its subsidiary or affiliated companies is to be reduced by twenty per cent (20%) thereof, which is approximately the aggregate of the deposits of the Company and of its subsidiary and affiliated companies with such banks subject to claim of offset against the Company's indebtedness to them. Such twenty per cent (20%) is to be paid in cash and any offset or application made or claimed by any such bank in respect of such indebtedness, whether more or less than the cash payment so made to it, is to be restored or surrendered on receipt of such cash payment.

The holders of the $18,176,800, principal amount, of such indebtedness that remains after deducting the aggregate of such cash payments, plus $681,630 as interest on $22,271,000 from October 15, 1924, to April 15, 1925, at the rate of six per cent (6%) per annum, or a total of $18,858,430, shall be entitled to receive under the Plan, for each $1,000 thereof, the following:

Preferred stock ..... 6.0 shares
Class A stock ..... 7.5 shares
Common stock ..... 4.3 shares

Fractions of $1,000 will be adjusted on the same basis.

2. The holders of $3,442,671, principal amount, of indebtedness other than that mentioned in the foregoing paragraph, plus $103,280 as interest thereon from October 15, 1924, to April 15, 1925, at the rate of six per cent. (6%) per annum, or a total of $3,545,951, shall be entitled to receive under the Plan, for each $1,000 thereof, the following:

Preferred stock ..... 6.0 shares

Class A stock ..... 7.5 shares
Common stock ..... 4.3 shares

Fractions of $1,000 will be adjusted on the same basis.

This amount of $3,442,671 consists of $2,515,000 of commercial paper of the Company sold through brokers, $536,500 of notes sold to banks or others direct by the Company and $391,171 of affiliated company bank debt.

Ten-Year Convertible Sinking Fund Six Per Cent and Seven and One-Half Per Cent Gold Bonds

3. The holders of $22,309,000, principal amount, of the Company's Ten-Year Convertible Sinking Fund Six Per Cent Gold Bonds, due December 1, 1928, and Ten-Year Convertible Sinking Fund Seven and One-Half Per Cent Gold Bonds, due December 1, 1931 (sometimes referred to herein as the debenture bonds), plus $669,270 as interest thereon from October 15, 1924, to April 15, 1925, at the rate of six per cent (6%) per annum, or a total of $22,978,270, shall be entitled to receive under the Plan, for each $1,000 thereof, the following:

Preferred stock ..... 6.0 shares
Class A stock ..... 7.5 shares
Common stock ..... 4.3 shares

Fractions of $1,000 will be adjusted on the same basis.

Adjustment of Interest

4. Interest on the principal amounts of the obligations mentioned in the foregoing paragraphs 1, 2 and 3 which shall be adjusted under the Plan, to the extent not already paid, is to be paid in cash up to October 15, 1924, at the rate of six per cent (6%) per annum. Interest thereon from October 15, 1924, to April 15, 1924, at said rate is to be adjusted in stocks of the New Company as above provided.

Obligations to Purchase Stocks of Affiliated Companies

5. The holders of $3,312,498 of obligations to purchase stock of Phoenix Leather Co., of Paul O. Reymann Co., of Wilson-Martin Co. and of United Chemical and Organic Products Co., plus $99,375 as interest thereon from October 15, 1924, to April 15, 1925, at the rate of six per cent (6%) per annum, or a total of $3,411,873, shall, subject to certain reservations, be entitled to receive under the Plan, for each $1,000 thereof, the following:

Preferred stock ..... 6.0 shares

Class A Stock ..... 7.5 shares
Common stock ..... 4.3 shares
Fractions of $1,000 will be adjusted on the same basis.

PREFERRED AND COMMON STOCK OF THE COMPANY

6. The holders of 100,490 shares of preferred stock of the Company shall be entitled to receive for each share of such preferred stock one and one-half shares of Common stock of the New Company.

7. The holders of 198,158 shares of common stock of the Company shall be entitled to receive therefor Common stock of the New Company at the rate of four-tenths of a share thereof for each share of common stock of the Company.

To satisfy the requirements of this plan the approximate aggregate amounts of the various stocks of the new company to be issued are as follows:

	—Number of Shares of New Company—		
	Preferred Stock	Class A Stock	Common Stock
For bank debt	134,426	168,033	96,339
For debenture bonds	137,870	172,337	98,807
For stock purchase obligations	20,471	25,589	14,671
For preferred stock (100,490 shares)	.....	.....	150,735
For common stock (198,158 shares)	.....	.....	79,263
Totals	292,767	365,959	439,815

10. Manner of Participation

This plan and the accompanying agreement were approved by the various depositories representing bank debts and the various classes of securities, with each of whom certified copies of the Plan and Agreement were filed. Each of these committees entered into an agreement with the reorganization committee whereby it undertook to make the Plan and Agreement binding upon all holders of certificates of deposit; and it was specified in the plan that "every holder of a certificate of deposit issued under any such agreement who shall so become bound shall be conclusively and finally deemed for all purposes to have irrevocably waived any right of dissent or withdrawal given by such agreement, and the

Plan and Agreement shall be binding on all such holders of certicates of deposit,....."

The plan next specifies when and how the various holders of bank debt and securities shall make deposit of the instruments evidencing the obligations of the company to them. Thus the holders of bank debt, commercial paper and stock purchase obligations were to deposit, before the close of business on June 2, 1925, with the First National Bank of Chicago, 38 South Dearborn Street, Chicago, Illinois, or with the Chase National Bank of the City of New York, 140 Broadway, New York City. Frequently the final day for deposit of securities is extended to secure a better representation. As to the form in which these securities must be deposited the plan provides:

> All bonds, notes, drafts and other instruments evidencing obligations or claims deposited must be in negotiable form or accompanied by proper instruments of assignment in blank for transfer and must be accompanied by such certificates, if any, as may be required under federal or state laws. All stock certificates and certificates of deposit for stock which shall be surrendered to the Reorganization Committee in exchange for stocks of the New Company to be delivered under the Plan must be endorsed in blank for transfer or accompanied by proper transfers in blank duly executed and, in either case, proper stamps for transfer under federal and/or state laws must be affixed. All of the debenture bonds of the Company of either of the above mentioned issues must bear all unpaid appurtenant coupons payable on or after December 1, 1924, and all references in the Plan and Agreement to said debenture bonds shall be deemed to include the appurtenant coupons as required.

11. Reorganization Committee

Next, the plan names the men who are to constitute the reorganization committee, and whose duty shall be to endeavor to consummate the reorganization. It is provided that this committee shall have the authority and powers expressly conferred upon it by the provisions of the plan and accompanying agreement, including the power to fill vacancies in its membership and to add other members. It is

provided that the expenses and compensation of the reorganization committee and of other committees, as well as of counsel and depositories, shall be paid as part of the expenses of reorganization. Determination of matters by the reorganization committee shall be by a majority vote thereof.

12. Underwriters

To make certain that the required funds will be forthcoming when needed, it is customary to have certain securities underwritten. In the Wilson & Company reorganization the reorganization committee arranged with the Guaranty Company of New York, Hallgarten & Co., Blair & Co., Inc., and Chase Securities Corporation to underwrite the sale of $2,500,000 Five-year Six Per Cent Gold Notes of the new company at a price to be approved by the reorganization committee at the time of making the offering. The compensation of the underwriters was fixed at 3% of the principal amount of the notes. The underwriters reserved the right to terminate their agreement in case the plan failed to become operative within a given time, in which case they were to receive compensation. The reorganization committee reserved the right to form additional groups of underwriters, also to terminate the obligations of any or all such groups of underwriters in case insufficient deposits of securities and claims were made to reasonably assure the carrying out of the plan, or in event of failure of any court having jurisdiction to approve the plan or any agreement formed under it.

13. Declaring Plan Operative

The plan provides that the reorganization committee may, from time to time, ascertain whether sufficient deposits of claims and securities have been made under the plan and whether other conditions have been sufficiently complied with to render it advisable to declare the plan operative and to go ahead with it.

. . . The Reorganization Committee in its discretion may declare the plan operative as to all classes of securities, obligations and claims for which provision is made in the Plan, or only as to certain classes of such securities, obligations and claims. If the Plan is declared operative only as to specified classes of securities, obligations or claims, it may later from time to time be declared operative in the discretion of the Reorganization Committee as to any other class or classes of securities, obligations or claims. If in its discretion the Reorganization Committee shall deem it expedient to do so, it may make an adjustment of any liability or indebtedness of the Company or of any of its subsidiary or affiliated companies, and for that purpose may use cash to the extent available or securities of any class deliverable under the Plan and not otherwise required for the purposes thereof and procure the issue of additional amounts of securities of any class or character under the Plan.

14. Cash Requirements

According to the provisions of the plan of reorganization of Wilson & Company, the expenses and obligations of receivership, reorganization, and interest adjustments, as well as other items which under the plan are to be paid in cash, are to be met by the new company to the extent not paid out of moneys coming into the hands or under the control of the reorganization committee.

15. Construction and Amendment of Plan

The reorganization committee is empowered to construe the plan and agreement, supplying any defects or omissions and reconciling any inconsistency as in its judgment is essential to its successful execution. It may also abandon the plan. If it modifies the plan it must do so in cooperation with the various protective committees.

FORM 426

WILSON & CO., INC., AND SUBSIDIARY AND AFFILIATED COMPANIES
CONSOLIDATED BALANCE SHEET AS OF AUGUST 30, 1924

ASSETS	
Cash (including impounded cash)	$ 8,773.849
Notes and Accounts Receivable	13,290,255

Inventories		29,089,986
Current		$ 51,154,090
Plant and Equipment		$ 69,070,661
Investments—Miscellaneous		327,937
Fixed		$ 69,398,598
Claims		$ 3,102,592
Treasury Stocks and Bonds at cost		384,350
Goodwill, Trade-Marks and Patents		11,984,050
Deferred Charges to Future Operations:		
Interest, Insurance, etc., prepaid	$ 696,365	
Unamortized Bond Discount	2,603,806	
Interest included in purchase price of Minority Stock Interests	242,700	
		3,542,871
Financial Readjustment Expense		104,079
Total		$139,670,630
LIABILITIES*		
Notes and Acceptances Payable		$ 32,018,923
Drafts against Consignments		1,324,500
Accounts Payable		4,354,869
Interest Accrued on Bonds		828,528
Other Obligations maturing within one year**:		
Mortgages and Car Equipment and Other Notes	$ 174,085	
Agreements for Minority Stock Interests	934,765	
		1,108,850
Current		39,635,670
First Mortgage 6% Bonds due 1941		22,896,000
Convertible 6% Bonds due 1928		† 13,373,000
Convertible 7½% Bonds due 1931		† 9,136,000
Other Obligations maturing after one year:		
Mortgages and Car Equipment and Other Notes	$ 269,540	
Agreements for Minority Stock Interests	4,380,892	
		4,650,432
Bonds of Subsidiary and Affiliated Companies		3,265,900
Minority Stock Interests not contracted for		483,581
		$ 93,440,583
Capital Stock—Preferred		10,079,000
Common		20,000,000
Surplus		16,151,047
Total		$139,670,630

* NOTE: Do not include any amount to cover claims for Federal or other taxes in dispute.

** NOTE: Do not include sinking fund instalments or instalments of principal maturing within one year in respect of bonds.

† NOTE: Includes $100,000 of such Bonds owned by Company.

Form 427

Estimated Balance Sheet Referred to and Explained in Subdivision XV on Page 18 of the Plan *

Current Assets (Less $1,000,000 Reserve)		$ 47,922,390
Current Liabilities†		12,789,793
Surplus Current Assets		$ 35,132,597
Ratio Current Assets to Current Liabilities		3.74 to 1
Assets		
Cash		$ 6,542,149
Accounts and Notes Receivable		13,290,255
Merchandise (Less $1,000,000 Reserve)		28,089,986
Current		$ 47,922,390
Plant and Equipment		$ 69,070,661
Investments—Miscellaneous		327,937
Fixed		$ 69,398,598
Deferred Charges		$ 696,365
Claims		1,000,000
Total		$119,017.353
Liabilities		
Notes and Drafts Payable of Subsidiary and Affiliated Companies		$ 7,179,752
Accounts Payable		4,354,869
Accrued Interest on Bonds		828,528
Other Obligations maturing within one year from August 30, 1924†:		
Mortgages and Car Equipment and Other Notes	$ 174,085	
Agreements for Minority Stock Interests	252,559	
		426,644
Current		$ 12,789,793
New Notes		2,500,000
First Mortgage 6% Bonds due 1941		22,896,000
Bonds of Subsidiary and Affiliated Companies		3,265,000
Other Obligations maturing after one year from August 30, 1924:		
Mortgages and Car Equipment and Other Notes	$ 269,540	
Agreements for Minority Stock Interests	1,750,600	
		2,020,140
Minority Stock Interests not contracted for		483,581
		$ 43,955,414
Capital Stock—Preferred (292,767 shares on basis of $100 per share)		29,276,700

Class A (365,959 shares on basis of $75 per share)	27,446,925
Common (††439,815 shares)	5,338,314
Reserves—property and contingencies	13,000,000
Total	$119,017,353

* NOTE: In preparing this estimated balance sheet the items of Good Will, Trade Marks and Patents and Unamortized Bond Discount shown in the Consolidated Balance Sheet as of August 30, 1924 (page 22, *supra*) have been eliminated and the item of Claims shown therein has been reduced to $1,000,000.

** NOTE: Do not include any amount to cover claims against the Company for Federal or other taxes in dispute.

† NOTE: Do not include sinking fund instalments or instalments of principal maturing within one year from August 30, 1924, in respect of bonds.

†† NOTE: Does not include Common stock (not exceeding 100,000 shares) which may be issued under the Plan to employees and management.

16. Statements and Estimates

The plan presents an estimated balance sheet, based on the consolidated balance sheet of the company and its subsidiary and affiliated companies, as of August 30, 1924, after giving effect to the adjustments specified in the plan and after adding to cash $2,312,500 as the estimated net proceeds from sale of the Five-year Six Per Cent Gold Notes of the new company. The estimated balance sheet reflects also the cash payment of 20% to be made to banks, but does not reflect the results of operation under the receivership or the expenses and other cash requirements of the reorganization. For the actual consolidated balance sheet of the company and the estimated balance sheet based thereon, see Forms 426 and 427, respectively.

The plan also presents an estimated statement of interest bearing obligations as of August 30, 1924, after giving effect to the adjustments specified in the plan (Form 426); also an estimated statement of charges against earnings and dividends on the basis of figures for gross earnings for the year ended December 27, 1924, after giving effect to such adjustments (Form 427).

Naturally, such statements cannot take into account the changes resulting in case any securities, obligations or claims do not become subject to the plan, nor do they take into account such additional obligations, if any, as may be

required; nor do they reflect adjustments which the reorganization committee may make in the exercise of powers conferred upon it.

17. Notices and Extension of Time

The plan specifies that calls or notices, if inserted in a daily newspaper of general circulation in the Borough of Manhattan, City of New York, and in a daily newspaper of general circulation in the City of Chicago, selected by the reorganization committee, twice in 10 days, in each case on any day of the week, shall be considered as equivalent to a personal service. Power is granted the reorganization committee to extend the time for making any deposit or payment required under the plan.

FORM 428

ESTIMATED STATEMENT OF INTEREST BEARING OBLIGATIONS AS OF AUGUST 30, 1924, AFTER GIVING EFFECT TO THE ADJUSTMENTS SPECIFIED IN THE PLAN OF REORGANIZATION

First Mortgage Bonds	$22,896,000.00
New Notes	2,500,000.00
Mortgages and Car Equipment and Other Notes	443,625.00
Mortgage Bonds of Subsidiary and Affiliated Companies	3,265,900.00
Notes and Drafts Payable	7,179,752.00
Stock Purchase Obligations	2,003,159.00
	$38,288,436.00
Minority Stock Interests not contracted for	483,581.00
Total	$38,772,017.00
Interest at 6%	$ 2,326,321.02

FORM 429

ESTIMATED STATEMENT OF CHARGES AGAINST EARNINGS AND DIVIDENDS ON BASIS OF FIGURES FOR GROSS EARNINGS FOR YEAR ENDED DECEMBER 27, 1924, AFTER GIVING EFFECT TO THE ADJUSTMENTS SPECIFIED IN THE PLAN OF REORGANIZATION

Gross Earnings	8,828,580.69
Depreciation	1,500,000.00
After Depreciation	$7,328,580.69

Interest on interest bearing debt, including Minority Stock Interest not contracted for ($38,772,017)		2,326,321.02
After Depreciation and Interest		$5,002,259.67
Federal Taxes at 12½%		625,282.46
Available for Dividends on Preferred Stock and Class A Stock		$4,376,977.21
Less dividends on preferred stock	$2,049,369	
Class A stock	1,829,795	3,879,164.00
Available for dividends on common stock		$ 497,813.21
or approximately $1.13 a share on *439,815 shares of common stock.		

* Note: Does not include common stock (not exceeding 100,000 shares) which may be issued to employees and management.

18. The Reorganization Agreement

After a plan of reorganization such as the one described in preceding pages has been drawn up and has been approved by the various committees representing the different groups of claimants and security holders, it is necessary to formulate an agreement to consummate the plan. The parties to this agreement are the members of the reorganization committee, acting for the company, and holders of the claims against the company and securities of the company. The reorganization agreement in the Wilson & Company reorganization contains the following essential clauses.

19. Scope and Terminology

It is agreed that the plan "is and shall be taken to be a part of this Agreement with the same effect as though each and every provision thereof were embodied herein, and the Plan and this Agreement (hereinafter together called this Plan and Agreement) shall be read and construed as parts of one and the same instrument."

The term "deposited securities, obligations and claims, or similar expression," whenever used in the agreement, is to refer to the various classes of the company's obligations and stocks deposited or represented by certificates of deposit.

20. Deposit of Securities, etc.

The securities, obligations and claims, to be adjusted under the Plan, as therein set forth, may be deposited under or become subject to this Plan and Agreement upon the terms and conditions stated herein and in the Plan. All securities, obligations and claims deposited must be in negotiable form or accompanied by proper instruments of assignment in blank for transfer, together with such ownership and/or other certificates as may be required under Federal or State laws. All debenture bonds must be accompanied by all unpaid appurtenant coupons payable on or after December 1, 1924. All stock certificates and certificates of deposit therefor must be endorsed in blank for transfer or accompanied by transfers in blank duly executed, and must be properly stamped for transfer.

21. How Holders of Securities, Claims, etc., May Benefit from Plan

Holders of securities, obligations and claims (or certificates of deposit therefor) entitled to participate in the Plan may become entitled to the benefits thereof as hereinafter provided, but no such holder shall be entitled to any of the benefits conferred by this Plan and Agreement who shall not deposit his securities, obligations and claims with the appropriate depository upon request of the Reorganization Committee.

Then follows a long statement regarding the functions and activities of the various committees. Explanation is given as to how holders of securities shall proceed to deposit same, and addresses of depositories are given. Specifications are laid down as to the issuance in exchange therefor of certificates of deposit. Provision is found for withdrawal from the agreement of holders of certificates of deposit, with certain limits as to the time within which such withdrawal may be made.

22. Failure to Deposit Securities, Claims, etc.

Holders of securities, claims, etc., must deposit them within the time specified in order to become parties to the agreement. The reorganization committee, however, may extend the time for making deposits.

23. Certificates of Deposit

The agreement provides that all depositors shall receive certificates of deposit in such form as the reorganization committee may prescribe. The holders of such certificates are entitled to the rights and benefits specified in the plan and agreement, provided they comply with the terms and conditions imposed by such plan and agreement. In case of the Wilson & Company reorganization, certificates of deposit were made transferable subject to the terms and conditions of the plan and agreement and upon conditions laid down by the reorganization committee. "Upon compliance with all the terms and conditions of this Plan and Agreement and of their certificates of deposit, Depositors shall be entitled to receive, upon the consummation of the Plan and upon surrender of their certificates of deposit in negotiable form or accompanied by transfers in blank duly executed, and properly stamped for transfer, stocks of the respective classes of the New Company (but only as and when issued and ready for delivery) and any cash to which they shall respectively be entitled pursuant to the terms and provisions of this Plan and Agreement."

24. Escrow Provision

"Except as otherwise provided herein, all securities, obligations and claims deposited hereunder or in any manner becoming subject hereto shall be held in escrow by the respective depositories or their agents, and title thereto shall not pass to the Reorganization Committee, but shall remain in the respective Depositors, unless and until the Reorganization Committee shall have taken title to such securities, obligations and claims as hereinafter provided." It is then provided that the reorganization committee may take title to any or all such deposited securities, claims, etc., by filing with the committee or committees representing them and/or with the depositories thereof, a copy of a resolution of the reorganization committee certified by its secretary "stating

that said committee has determined to take title to the securities, obligations and claims specified in such certified resolution, and immediately upon such filing of such certified resolution, legal title to such securities, obligations and claims so specified shall forthwith pass from the respective Depositors to and vest in the Reorganization Committee, and thereupon the Reorganization Committee shall be vested with the legal title to and all the rights, power and authority of absolute owner of all such securities, obligations and claims so specified."

25. Reorganization Committee Made Attorney of Depositors

Since the depositors desire the reorganization committee to carry out the plan and agreement of reorganization in the most effective manner it is to their interest to give it full power to act. This they do by constituting it a "true and lawful attorney and Proxy irrevocable, with full power of substitution,.... to do any and all acts and things which the Reorganization Committee may deem necessary or appropriate for the purpose of carrying out this Plan and Agreement in whole or in part." The agreement then enters into detail regarding the powers granted to the reorganization committee. These are numerous and extensive, including the power to demand, receive and collect moneys, elect trustees under mortgages, to engage in legal proceedings, to attend and vote at meetings of bondholders and stockholders, to organize new companies, in brief, to do all things that the authors of the plan and agreement think it necessary to specify in order to give the reorganization committee adequate power to proceed in its work of reconstruction. Procedure is prescribed in case the reorganization committee decides to abandon the plan of reorganization.

26. Procedure of Reorganization Committee

The individuals constituting the reorganization committee are named and the rules governing the committee thus con-

stituted are laid down. The vote of the committee necessary to act is prescribed. The agreement for Wilson & Company states that the committee may act "either at a meeting or in writing or by cable or telegram without a meeting." Furthermore, members "may vote or act by a general proxy or power of attorney subject to change or revocation, or by a proxy or power of attorney for any particular meeting or meetings or for any specific purpose or purposes, and the holder of any such proxy or power of attorney, may, but need not, be another member of the reorganization committee." Among the things concerning which specifications are found are:

1. Fixing rules of procedure
2. Expenses and compensation of committee
3. Designation of a successor in case of the death of a member
4. Personal liability of members
5. Formation of syndicates
6. Employment of counsel, depositories, agents and assistants

Finally, to make certain that the general powers of the reorganization committee are not abridged it is provided that "The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; it being intended to confer on the Reorganization Committee, in respect of all deposited securities, obligations and claims, and in all other respects, any and all powers which the Reorganization Committee may deem expedient in or towards carrying out or promoting the purposes of this Plan and Agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Reorganization Committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as for any reason it may deem expedient."

27. Miscellaneous Provisions of Agreement

Other provisions of the agreement relate to impairment of securities, obligations and claims through delivery of new

securities or payment in cash, publication of calls or notices, the accounts of the reorganization committee, the binding character of the plan and agreement on depositors and other parties to the agreement, and the execution of counterparts of the agreement.

28. Deposit and Protective Agreements

In case of the financial embarrassment of a company it becomes necessary for the various groups of security holders to take some kind of concerted action for their protection. These must not be confused with the reorganization committee considered in preceding pages. They exist in addition to a reorganization committee, if it becomes necessary to appoint one, and by cooperating with it, obtain for the security owners whom they represent the best terms available under the circumstances. Form 430 is the noteholders' protective agreement entered into between holders of Eight Per Cent Serial Gold Notes of the Oliver Typewriter Company, dated May 1, 1921, and the protective committee mentioned in the agreement. The occasion for the formation of the protective committee is stated at the beginning of the agreement. It should be noted the fourth covenant gives the committee full power and authority "to apply for or join with others in applying for or consent to or oppose the appointment of a receiver or receivers of any of the property of the company"; also "to consent to or oppose any reorganization, consolidation or readjustment of the Company or of its finances."

FORM 430

This Agreement, Made and entered into this 15th day of April, A. D. 1924, between J. E. BLUNT, JR., B. G. McCLOUD, PAUL BUHLIG, F. T. ROCKWOOD and B. F. TAYLOR (hereinafter called the "Committee"), parties of the first part, and such holders of the Eight Per Cent Serial Gold Notes of THE OLIVER TYPEWRITER COMPANY, an Illinois corporation (hereinafter called the "Company"), dated May 1, 1921,

and mentioned in the trust agreement to THE MERCHANTS' LOAN AND TRUST COMPANY, Trustee, dated May 1, 1921, as shall become parties to this agreement as herein provided, parties of the second part (hereinafter called the "Depositors"), WITNESSETH:

THAT WHEREAS, the Company heretofore executed, issued and delivered its Eight Per Cent Serial Gold Notes, dated May 1, 1921, for the aggregate sum of seven hundred fifty thousand dollars ($750,000); and

WHEREAS the Company has become involved in financial difficulties and on account of the default of the Company in the performance of some of its covenants in said trust agreement contained the Trustee under said trust agreement, has pursuant to the provisions thereof, declared the entire principal of all of said notes now outstanding to be forthwith due and payable and has demanded payment thereof with the interest thereon; and

WHEREAS united action on the part of the holders of said notes is necessary in order to protect their rights and interests and to enforce and procure payment of said notes; and

WHEREAS the Committee has consented to represent the Depositors as hereinafter set forth;

NOW THEREFORE, in consideration of the premises and of the mutual advantages that will accrue to the depositing noteholders from a union of interests and concert of action, it is agreed by and between the parties hereto as follows:

FIRST: The said J. E. Blunt, Jr., B. G. McCloud, Paul Buhlig, F. T. Rockwood and B. F. Taylor are hereby constituted and appointed a committee to act for the Depositors and to exercise the powers and perform the duties herein mentioned, and said J. E. Blunt, Jr., B. G. McCloud, Paul Buhlig, F. T. Rockwood and B. F. Taylor do hereby consent to act in that capacity.

SECOND: Any holder of any of said notes of the Company may deposit the same under and subject to the terms of this agreement with Illinois Merchants Trust Company and said Illinois Merchants Trust Company shall hold all notes so deposited subject to the direction, control and disposition of the Committee in the same manner, to the same extent and with the same effect as if the Committee were the absolute owners thereof. The said Illinois Merchants Trust Company shall at all times be free from all liability and responsibility in dealing with or disposing of the notes so deposited as directed by a majority of the Committee and Illinois Merchants Trust Company is fully authorized and empowered to transfer, deliver and dispose of any or all of said notes and the interest coupons therefor deposited hereunder to or in

accordance with the written request or order from time to time of the Committee, and all such orders shall be good and valid if signed by a majority of the Committee as it is constituted from time to time. Each depositor of notes shall upon the making of the deposit become a party to and be bound by all the terms and provisions of this agreement in the same manner and to the same extent and with the same effect as if he had personally signed this agreement and shall be entitled to receive from the depositary a transferable certificate of deposit in substantially the following form:

ILLINOIS MERCHANTS TRUST COMPANY

Number..... $.....of Notes.

Certificate of Deposit for Eight Per Cent Serial Gold Notes of The Oliver Typewriter Company, dated May 1, 1921.

This certifies that ..... (or his predecessor in interest) has deposited with the undersigned eight per cent serial gold notes of The Oliver Typewriter Company, dated May 1, 1921, of the aggregate principal par value of..... dollars ($.....), said notes being numbered ....., and each having attached thereto coupons maturing May 1, 1924 and thereafter. Said notes and coupons are deposited and this certificate is issued under and subject to the terms of a certain agreement, dated ....., A. D. 1924, now on file in the office of the undersigned relating to such notes and said notes are subject to the direction, control and disposition of the Committee named in said agreement and their successors.

The holder of this certificate and any and all assignees thereof by accepting this certificate becomes a party to said agreement and becomes bound thereby in the same manner and to the same extent as if he had executed the same.

This certificate is transferable only on the books of the undersigned, upon the written order of the registered holder hereof, but neither the undersigned nor said Committee shall be bound to take notice of or be affected by any trust respecting the ownership or title of this certificate or of the notes represented thereby. This certificate must be returned to the undersigned, properly endorsed, before any holder or assignee shall be entitled to receive any of said notes or any of the proceeds thereof.

CHICAGO, ILLINOIS, ..., A. D. 1924.

ILLINOIS MERCHANTS TRUST COMPANY,

By .....

The holder or assignee of any such certificate shall be subject

to all of the obligations of a Depositor hereunder in the same manner and to the same effect as though such holder or assignee had originally deposited the notes and coupons represented by such certificate and with like effect as if this agreement had been signed by him in person.

THIRD: The Committee is hereby vested with the legal title to all the notes and coupons which may be deposited under this agreement and the Depositors hereby assign and transfer all such notes and coupons to the Committee.

FOURTH: The Committee are hereby constituted and appointed the agents, attorneys and representatives of the Depositors for the purpose of protecting, guarding, securing and enforcing the rights of the Depositors arising from or accruing out of said notes and coupons and the trust agreement relating to them and the Committee shall have full power and authority to represent, bind and act for the Depositors in all such matters as fully and completely and effectively as the Depositors themselves might do; and the powers hereinbefore given shall not be narrowed or limited by any enumeration of the powers hereinafter contained.

Without limiting, restricting or affecting the power and authority above granted to the Committee, it is agreed and provided that the Committee may do all such acts and things and may institute, carry on, defend, control, settle and dispose of all such suits and proceedings at law or in equity or otherwise as they may deem expedient, necessary or convenient for securing the payment of the whole or any part of the principal or interest of said notes or for obtaining any benefit or security or for protecting, enforcing, guarding or securing any rights or interests of the Depositors.

The Committee shall have full power and authority; (1) To apply for or join with others in applying for or consent to or oppose the appointment of a receiver or receivers of any of the property of the Company; (2) To assent to or oppose any order of court which any receiver or other party may suggest or propose for the use, preservation, maintenance, equipment, repair, rehabilitation, improvement, alteration, extension, sale, lease or disposition of any property of the Company; (3) To assent to or oppose the issue and sale of receivers' certificates, notes or bonds, which may be secured by lien upon any property of the Company or otherwise; (4) To institute, prosecute, settle, compromise, discontinue or dismiss any and all such suits or proceedings at law or in equity or otherwise as they may deem expedient, necessary or convenient; (5) To join with others in the institution, prosecution, settlement, compromise, discontinuance, dismissal or abandonment of any proceeding; (6) To compromise or settle any or all of the claims

or rights of the Depositors hereunder; (7) To authorize or direct the Trustee under said trust agreement to take action thereunder or to institute, prosecute, settle, compromise, discontinue or dismiss any and all such suits and proceedings at law or in equity or otherwise as they may deem expedient, necessary or convenient and to indemnify the Trustee and the Depositary; (8) To arrange for and to assent to or to oppose from time to time any sale on any terms, either for cash or upon credit or partly for cash and partly upon credit, or to consent to or oppose any assignment, lease, exchange, encumbrance, mortgage or conveyance, of any property of the Company; (9) To consent to or oppose any reorganization, consolidation or readjustment of the Company or of its finances; (10) To buy for the account of the Depositors any property of the Company and to sell on any terms, assign, lease, exchange, encumber, mortgage, improve, convey and dispose of all such property; (11) To demand, collect and receive all amounts that may be or may become due or owing upon the said notes and coupons; (12) To sue for and recover or cause the Trustee to sue for and recover all amounts that may be or may become due or owing upon said notes and coupons; (13) To compromise, compound, adjust and settle any and all taxes, and tax claims respecting any property of the Company or of the Committee; (14) To sell, assign, exchange and dispose of said notes and coupons and any part thereof and any property received therefor, either for cash or for bonds or other securities or shares of stock of other corporations or other property; (15) To make, execute and deliver any instrument in writing necessary or convenient to enable the Committee to carry out any of the purposes of this agreement; (16) To receive moneys or property payable on or for said notes and coupons; (17) To use the said notes and coupons and the proceeds thereof, in their discretion, to carry out any of the purposes of this agreement; (18) To employ agents, attorneys, counsel, experts and accountants, and to fix and pay their compensation and to pay reasonable compensation for all services that may be rendered to or at the request of the Committee and to pay Illinois Merchants Trust Company for its services hereunder; (19) To borrow money, from time to time, in their discretion, to carry out the purposes, powers and trusts hereof, and to pay any taxes or encumbrances or claims against the property of the Company; (20) To use, pledge, convey or cause to be conveyed any of said notes or coupons or any property of which the Committee may become seized and possessed to secure the payment of any loan to the Committee for the payment of any indebtedness or liability which shall be made or incurred by the Committee; (21) To

protect, manage, control, lease, improve, insure, sell, assign, exchange, encumber, mortgage, convey and dispose of any property which the Committee may acquire; (22) To sell, assign, pledge, exchange and deal with said notes and coupons as fully as if they were the owners thereof; (23) To organize or form such corporations, trusts, syndicates and committees as they may deem expedient; (24) To adopt such rules and regulations for their own procedure as they may deem expedient; and (25) The Committee shall have all the authority, powers, discretions and rights with respect to said notes and coupons which absolute owners might have and the Committee shall have full power and authority to deal with said notes and coupons as absolute owners thereof.

It is understood and agreed, however, that the powers hereby granted to the Committee are discretionary, and that the Committee shall be under no obligation to do any act, or take any step or proceeding hereunder, or to exercise any of the powers hereby granted, in case the Committee shall deem it for the best interests of the bondholders not to take such action or to exercise such power.

FIFTH: The powers and duties hereby vested in the Committee may be exercised by a majority of the members thereof and the action of the majority of the members of the Committee shall constitute the action of the Committee and have the same effect as if assented to by all. The Committee may employ agents, servants and attorneys and may consult counsel and may delegate their powers. Any member of the Committee may act by or through an agent or attorney appointed in writing. Any member of the Committee may resign by notice in writing deposited with Illinois Merchants Trust Company and such resignation shall take effect upon the deposit of such notice. Vacancies in the Committee, from whatever cause, shall be filled by the appointment of a successor or successors by the remaining members, who during the vacancies shall exercise all the powers and duties herein mentioned. The members of the Committee shall be responsible only for their own acts and defaults respectively, and not for those of each other, and no member shall be personally liable to any other person or persons by reason of any act of the other members in which he does not concur. The number of members of the Committee may by a majority vote of all the members be reduced at any time to not less than three (3) or increased to such number as the Committee may provide. The provisions contained in this agreement referring to the Committee shall extend and be applicable to the members thereof for the time being, notwithstanding any vacancy or vacancies that shall not have been filled and

notwithstanding any change in the personnel of the Committee.

SIXTH: In case the Committee shall acquire the property of the Company or any part thereof, they may cause the same to be conveyed to such person, persons, corporation or corporations as the Committee shall deem proper, in trust, to secure the payment of any money that the Committee shall have been obliged to raise for the purposes hereof or for the payment of any expenditures or liability or disbursement authorized hereunder, and subject thereto to be converted into personal property, either by sale or exchange for shares of stock, bonds or securities or other property, and the Committee may sell or exchange any property so acquired upon any terms that the Committee shall deem best.

SEVENTH: Upon the completion of any arrangement, compromise, consolidation, reorganization or sale which the Committee shall have made or accomplished in accordance with the provisions hereof, the Committee shall hold all moneys, securities and property vested in them or acquired by them in carrying out the powers and trusts hereof: (1) To distribute the same or any part thereof among the Depositors ratably according to their respective interests in the notes and coupons deposited by them; or (2) In the discretion of the Committee, to sell and convert the same or any part thereof into money, with power to postpone such sale and conversion and then out of the proceeds to pay all expenses, liabilities and outgoings in the execution of these presents, including their own reasonable remuneration and expenses, and then to distribute the residue among the Depositors ratably as aforesaid. The Committee, in their discretion, may make such distribution at any time and may be compelled to make such distribution at any time after ninety (90) days from the date of the completion of such arrangement, compromise, consolidation, reorganization or sale upon the written demand of a majority in interest of the Depositors, upon receiving such reasonable indemnity as the Committee may require against damage or liability.

The accounts kept by the Committee and the distribution made by the Committee shall be final, conclusive and binding as to calculation and amount.

EIGHTH: Neither Illinois Merchants Trust Company nor any member of the Committee shall be answerable for any default of any officer, employee, agent or attorney selected and appointed with reasonable care. Neither Illinois Merchants Trust Company nor any member of the Committee shall be under any obligation or liability not affirmatively expressed herein. Illinois Merchants Trust Company and the Committee shall be fully protected in acting upon any certificate, statement, report, order, notice, re-

quest, consent, affidavit or other paper or document believed to be genuine and to be signed by the proper party or parties.

NINTH: The Depositors shall not be personally liable to the Committee or to any other person or persons for any sum of money or for, or in respect of any of the acts of the Committee, or any of them, except as herein provided.

TENTH: Neither the Committee nor Illinois Merchants Trust Company shall be under any obligations, express or implied, to any noteholder who does not deposit his notes with Illinois Merchants Trust Company under the terms hereof, nor shall any noteholder not so depositing his notes have any right or claim whatsoever under or by virtue of this agreement.

ELEVENTH: The Committee may at any time upon filing written notice with Illinois Merchants Trust Company terminate this agreement whenever they shall be of opinion that a sufficient number of said notes have not been, or are not likely to be, deposited hereunder, or whenever they shall think best so to do, or whenever the termination hereof shall be requested by three-fourths (¾) in interest of the Depositors. The termination of this agreement shall not affect any previous acts or contracts of the Committee. The Committee shall be under no obligation to terminate this agreement or surrender the notes or coupons or any property thereunder, until all the expenses and liabilities incurred by the Committee and its own reasonable compensation shall have been paid.

TWELFTH: The Committee may limit the time within which bonds may be received and may extend any time so limited upon such conditions as the Committee shall deem proper.

THIRTEENTH: Any notice from the Committee or from a Depositor or from the Depositary to a Depositor hereunder may be given by mailing the same, with first-class postage prepaid, addressed to the Depositor at his address registered with the Depositary, and notice so given shall be deemed duly served upon the Depositor, and the certificate of any member of the Committee or of its secretary or of an officer, clerk or employee of the Depositary shall be conclusive evidence of the mailing of such notice.

FOURTEENTH: The deposited notes and coupons and any other property received by the Committee under the provisions of this agreement shall be charged with the payment of the compensation of the Committee and its counsel's fees and its expenses, indebtedness, obligations and liabilities.

FIFTEENTH: Any member of the Committee and any firm or corporation, of which he may be a member, stockholder, director or officer, and the Depositary, its officers, stockholders and

directors, may be and become pecuniarily interested in any property, securities or matters which are or may become the subject of this agreement.

SIXTEENTH: Whenever the Committee shall propose to sell the deposited notes and coupons at a price which will net less than the par or face value of the deposited notes and coupons and whenever the Committee shall approve any plan or agreement of reorganization or readjustment, a statement of the terms of such proposed sale or a copy of such plan or agreement of reorganization or readjustment, as the case may be, shall be filed with the depositary and thereupon a brief notice of such proposed sale or of the fact of the approval of such plan or agreement of reorganization or readjustment shall be given by the Committee by mailing such notice to each Depositor addressed to his last known address as shown upon the books of the depositary. The mailing of such notice shall be conclusive notice to all Depositors. Any Depositor may, at his option, within twenty (20) days of the date of the mailing of such notice withdraw from this agreement by (1) filing with the depositary at its office in Chicago written notice of his dissent from such proposed sale or plan or agreement of reorganization or readjustment, as the case may be, and of his desire to withdraw from this agreement; and (2) depositing with the depositary for the account of the Committee such sum as the Committee shall, in its discretion, fix as a fair proportion payable by the withdrawing Depositor of the expenses and obligations of the Committee to the date of such withdrawal; and (3) surrendering to the depositary the certificates of deposit held by him; and (4) paying to the depositary for the account of the Committee such Depositor's share as fixed by the Committee of any obligation secured by any existing pledge of the deposited bonds. Thereupon such Depositor shall be fully released from the obligations of this agreement and shall cease to be a party hereto or to have any rights hereunder except that he shall be entitled to receive from the depositary notes of the same maturities as and of a face or par value equal to those represented by the certificate of deposit surrendered by him or the pro rata share apportionable thereto of the proceeds then held hereunder of such notes, but if the deposited notes shall be subject to any pledge created by the Committee the Depositor shall receive in lieu of notes an assignment and transfer subject to such pledge, and if the deposited notes shall be sold or exchanged for other property by the Committee then the Depositor shall be entitled to receive as determined by the Committee his fair proportion or interest in the property held or received in lieu of such notes or, at the option of the Committee, to receive a fair

payment or allowance in cash as fixed by the Committee in lieu of such interest in such property.

Depositors who fail to withdraw in the manner aforesaid within such period of twenty (20) days shall be conclusively and finally presumed for all purposes to have irrevocably waived the right of withdrawal hereby given to them and their assent to and ratification of such proposed sale or such plan or agreement of reorganization or readjustment, as the case may be, shall be conclusively and finally presumed and is hereby expressly conferred and irrevocably given whether or not such Depositor shall have actually received notice of such proposed sale or such plan or agreement of reorganization or readjustment. The Committee, however, shall be at liberty to proceed to carry into effect and consummate the proposed sale of all notes and coupons not so withdrawn and to carry into effect and consummate the plan or agreement of reorganization or readjustment, if the Committee shall deem it wise to do so and such withdrawing Depositors shall have no further rights except as herein specified under this agreement or under any such plan or agreement of organization or readjustment. The Committee at any time prior to carrying out any proposed sale of notes or any plan or agreement of reorganization or readjustment may abandon the same, if in the discretion of the Committee it shall seem advisable to do so, notwithstanding the Committee may have declared the same effective and operative, or it may modify the same in any and all respects. In case any proposed sale or any plan or agreement of reorganization or readjustment shall be abandoned or modified in any respect, in which the Committee in its uncontrolled discretion shall deem to be material, or any other sale of said notes be proposed which will net less than the par or face value of the deposited notes and coupons, the foregoing provisions concerning the filing of statements and copies thereof and the giving of notice thereof and concerning dissent and ratification shall apply to such new proposals and modified plans and agreements.

SEVENTEENTH: The Committee may allow any Depositor to withdraw his notes and coupons or proceeds thereof upon such terms and conditions as the Committee may, from time to time, fix.

EIGHTEENTH: Neither the Committee nor any member of it nor the depositary nor any agent of the Committee or of the depositary shall be liable for any estimate, statement, explanation, suggestion or anything contained herein or in any letter or circular that may hereafter be issued or published by the Committee or any other party and no such estimate, statement, explanation or

suggestion is intended or is to be taken or accepted or to be construed as a representation or warranty or as a condition of or inducement for any deposit or assent to this agreement or any modification thereof.

NINETEENTH: This agreement shall bind the heirs, legal representatives and assigns of the several parties Depositors hereunder, and such parties, by whatever name called, shall be held to include executors, administrators, guardians and conservators and all persons acting in any fiduciary capacity and in like manner all corporations.

For convenience, this instrument may be executed in various counterparts, one of which executed by the Committee shall be deposited with Illinois Merchants Trust Company and any one counterpart shall be sufficient evidence of this agreement and it shall not be necessary to produce or prove the execution of any other counterpart hereof.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals and the Depositors evidence their assent hereto by their deposit hereunder of said bonds of the Company.

J. E. BLUNT, JR.	(SEAL)
B. G. MCCLOUD.	(SEAL)
PAUL BUHLIG.	(SEAL)
F. T. ROCKWOOD.	(SEAL)
B. F. TAYLOR.	(SEAL)

29. Reorganization of Subsidiary Company

Not infrequently a subsidiary company proves to be a losing venture and were it not for the interposition of the powerful parent company a receivership would be inevitable. There are various ways by which a parent company may come to the assistance of an embarrassed subsidiary in order to prevent a receivership. An illustration is provided in the experience of the Continental Paper and Bag Mills Corporation, a subsidiary of the International Paper Company. For a period of several years ending with 1927 the company had played a losing hand owing to conditions of the trade and intense and destructive competition, although its business was maintained at almost maximum production, and in spite of large expenditures for capital improvements designed to effect operating economies. For the two-year period

ending December 31, 1926, and the first eight months of 1927, the company sustained net losses, aggregating after interest, depreciation and taxes, over $3,000,000. Form 431 is a copy of the balance sheet of the company and its subsidiaries as of June 30, 1923, a copy of the balance sheet of the same companies as of June 30, 1927, and a statement showing results of operation for each of the two years ending December 31, 1925, and December 31, 1926, and for the first eight months of 1927.

During this period of difficulties the International Paper Company made advances to the Continental Paper and Bag Mills Corporation to provide the needed capital improvements and to meet interest and sinking fund charges on outstanding obligations so that as of November 1, 1927, the subsidiary company owed the parent company over $6,700,000. In addition, International Paper Company had guaranteed bank loans of Continental Paper and Bag Corporation amounting to $1,745,000.

As a result of the unfavorable situation the market value of the Continental's First and Refunding Mortgage Bonds underwent a substantial depreciation in market price, selling for about 75% of par value. A committee of bankers representing the holders of these bonds undertook negotiations with representatives of the International Paper Company to find what the latter company would do towards working out a plan to improve the situation. The board of directors of the International Paper Company decided not to make further advances to the Continental Paper and Bag Mills Corporation, believing that the solution to the situation lay in a radical readjustment of its financial structure. Indications were that on February 1, 1928, the company would default on interest payments on the above mentioned bonds with resulting receivership and foreclosure.

The committee believed that such an outcome would be disastrous to holders of the First and Refunding Mortgage Bonds, and accordingly, through negotiations with the International Paper Company, made arrangements whereby the

latter agreed to buy these bonds, issuing in payment 7% cumulative preferred stock of International Paper Company at the rate of .825 of a share of such stock for each $100 principal amount of such bonds with all coupons maturing after August 1, 1927, attached, and to make an appropriate dividend adjustment in cash. A copy of the exchange offer is shown in Form 432, Exhibit A (page 1174).

Regarding this offer the committee said:

The above-mentioned offer is conditioned upon its acceptance in the manner set forth below on or before December 15, 1927, by bondholders owning in the aggregate at least 90% of the total principal amount of such bonds outstanding, with the right on the part of International Paper Company, at its option, to extend such date by not more than 90 days in the aggregate and/or to declare the exchange offer effective upon acceptance by a smaller percentage of the outstanding bonds.

FORM 431

CONTINENTAL PAPER & BAG MILLS CORPORATION
AND SUBSIDIARY COMPANIES
COMPARATIVE CONSOLIDATED GENERAL BALANCE SHEETS

ASSETS

	June 30, 1927	*June 30, 1923**
CAPITAL ASSETS:		
Properties, less reserve for depreciation	$18,986,603.83	$18,007,454.23
Securities	315,191.00	399,945.71
	$19,301,794.83	$18,407,399.94
SINKING FUND	18,406.74	51,387.56
CURRENT ASSETS:		
Cash	510,049.63	964,819.52
Accounts & Notes Receivable	2,351,241.84	1,664,784.34
Inventories and cash advances for logging operations	5,003,606.99	4,010,557.12
	$ 7,864,898.46	$ 6,640,160.98
DEFERRED ASSETS	1,152,947.22	116,338.57**
Total Assets	$28,338,047.75	$25,215,287.05

*The figures of June 30, 1923, are from the audited balance sheet which was included in the offering circular of the Corporation's First and Refunding Mortgage 6½% Twenty-Year Sinking Fund Gold Bond, Series A.

**Not including $999,958.33 Bond Discount charged directly to surplus on the audited balance sheet included in the circular but carried on the Company's books as a Deferred Asset.

LIABILITIES

	June 30, 1927	*June 30, 1923*
FUNDED DEBT:		
First & Refunding 6½% Gold Bonds Series A, due 1944	$ 5,348,400.00	$ 6,000,000.00
Marinette & Menominee Paper Co. 7½% First Mortgage Gold Bonds Series "A", due 1936	1,500,000.00	1,907,400.00
Continental Paper Products, Ltd. 6½% First Collateral Mortgage Bonds Series A, due 1943	641,500.00	750,000.00
Purchase Property Obligations	142,350.00	.....
	$ 7,632,250.00	$ 8,657,400.00
CURRENT LIABILITIES:		
Notes Payable	$ 1,967,562.05	$ 799,511.80
Notes Payable—International Paper Co.	6,410,243.19	.....
Accounts Payable	900,652.28	813,933.35
Accounts Payable—International Paper Co.	308,242.51	.....
Reserve for Income Taxes	.....	50,000.00
	$ 9,586,700.03	$ 1,663,445.15
LAND CONTRACTS PAYABLE	.....	57,249.37
DEFERRED INCOME	653.41	.....
RESERVES	160,122,91	300,000.00
CAPITAL STOCK & SURPLUS:		
Prior Preference 7% Preferred Stock, Cumulative	4,000,000.00	4,000,000.00
6% Preferred Stock, Cumulative	2,500,000.00	2,500,000.00
Common Stock	3,750,000.00	3,750,000.00
Surplus	708,321.40	4,287,192.53
	$10,958,321.40	$14,537,192.53
* Total Liabilities	$28,338,047.75	$25,215,287.05
CONTINGENT LIABILITY	61,745.56	79,474.32

CONSOLIDATED PROFIT AND LOSS STATEMENT

	Eight Months Ended Aug. 31, 1927	*Year Ended Dec. 31, 1926*	*Year Ended Dec. 31, 1925*
Total Revenue	$771,434.40	$ 262,760.55	$ 162,326.77
Depreciation	338,548.58	492,964.35	458,007.95
	$432,885.82	*$ 230.203.80*	*$ 295,681.18*
Interest	754,471.63	1,103,097.50	1,060,564.47
	$321,585.81	*$1,333,300.85*	*$1,356,245.65*
Reserve for Insurance	.....	25,000.00	.....
Net Loss for Period	*$321,585.81*	*$1,358,300.85*	*$1,356,245.65*

Figures in Italics denote Deficit.

As the 7% Cumulative Preferred Stock of International Paper Company is selling in the market at approximately 103 as of this date, the exchange offer is equivalent to about 85 for the bonds, plus interest at the rate of slightly over 5¾% per annum since August 1st last. The bondholders accepting the offer will, on consummation thereof, receive a 7% Cumulative Preferred Stock, listed on the New York Stock Exchange, of a successful and growing company—the largest of its kind in the world—and on the basis of the dividend rate payable on the shares to be issued in exchange for the bonds such bondholders will continue to receive a return of nearly 6⅛% per annum on the original offering price (viz. 95) of the bonds. Moreover, the bondholders being in possession of International Paper Company 7% Cumulative Preferred Stock would benefit by any increase in the market value thereof which might develop if the Company continues to demonstrate increasing earning power. If the price of the Preferred Stock should reach that of the preferred stocks of other large and important companies, the amount originally invested by any bondholder would be fully regained.

The undersigned believe that the acceptance of the offer under existing conditions will be in the interests of the bondholders, and they are accordingly accepting the same in respect of the bonds owned by them and are recommending to their respective customers that they do likewise.

In order to facilitate acceptance of its offer, International Paper Company has entered into a deposit agreement with The Chase National Bank of the City of New York, as Depositary, dated as of November 1, 1927, a copy of which may be had on application to such Depositary or to any of the undersigned. The original of the offer of International Paper Company, addressed to the holders of the above-mentioned bonds, is on file with such Depositary and a copy thereof is attached to such deposit agreement. As provided in the offer, if by *December 15, 1927* (or by such later date not more than 90 days thereafter as International Paper Company may approve by notice to such Depositary) the holders of 90% in principal amount of the bonds outstanding (or such smaller percentage thereof as International Paper Company may approve) have accepted the offer by the deposit of their bonds with all coupons maturing after August 1, 1927, attached, under said deposit agreement, International Paper Company agrees within 30 days after the deposit of the required amount of the bonds to deposit with such Depositary the Preferred Stock required for the purpose of effecting the exchange and the cash required to effect the dividend adjustment as above set forth, and

the Depositary will then make delivery of the Preferred Stock (and its own fractional scrip receipts, for fractional interests therein) to the record holders of its deposit receipts, or their registered assigns, on surrender thereof, and will also pay to them their pro rata share of the cash so deposited to effect the dividend adjustment provided for in the offer.

The deposit agreement referred to in the preceding paragraph is shown in Form 432. Exhibits A, B, and C, respectively, are the exchange offer, deposit receipt employed, and fractional scrip for 7% cumulative preferred stock.

Form 433 is the option notice to the Chase National Bank providing for sale of the preferred stock received in exchange for the bonds.

Form 434 is a letter issued December 1, 1927, explaining the advantages of the proposed exchange resulting from the appreciated market value of the preferred stock.

Form 432

Deposit Agreement

Agreement, dated as of November 1, 1927, between International Paper Company, a corporation of the State of New York, hereinafter called the "Company", party of the first part; The Chase National Bank of the City of New York, a national banking association of the United States of America, hereinafter called the "Depositary", party of the second part; and such holders and registered owners of the First and Refunding Mortgage 6½% Twenty-Year Sinking Fund Gold Bonds, Series A, of Continental Paper & Bag Mills Corporation, a corporation of the State of Delaware, as shall become parties hereto in the manner hereinafter provided, who, with their successors in interest, are hereinafter called the "Depositors", parties of the third part.

Whereas, the Company desires to acquire the outstanding First and Refunding Mortgage 6½% Twenty-Year Sinking Fund Gold Bonds, Series A, of Continental Paper & Bag Mills Corporation (hereinafter called the "Bonds"), and has made an offer bearing even date herewith to the holders and registered owners thereof to purchase the Bonds and to issue and/or deliver in payment therefor the 7% Cumulative Preferred Stock of the Company (hereinafter called the "Preferred Stock"), upon the basis and subject to the terms and conditions of said offer; and

WHEREAS, the original of said offer (hereinafter called the "Exchange Offer"), has been delivered to and is now lodged with the Depositary for the account and benefit of the holders and registered owners of the Bonds, a copy of which is hereto attached marked *Exhibit A* and hereby made a part hereof; and

WHEREAS, the Company, as contemplated in the Exchange Offer, desires by this Agreement to provide a method for the acceptance of the Exchange Offer by holders and registered owners of the Bonds and for the consummation of the Exchange Offer, if the same shall become effective in accordance with its terms;

NOW THEREFORE, in consideration of the premises and of the mutual covenants hereof, the parties hereto do hereby severally agree, each Depositor agreeing (each for himself and not for any of the others) with the other Depositors and with the Company and the Depositary, as follows:

1. Any holder or registered owner of the Bonds may become a party hereto by depositing with the Depositary within the time limit provided in the Exchange Offer his Bond or Bonds, with all coupons maturing after August 1, 1927, attached, accompanied in the case of registered Bonds by duly executed assignments in blank, all signatures being guaranteed to the satisfaction of the Depositary. The deposit of the Bonds and the acceptance of deposit receipts issued therefor as hereinafter provided shall have the same force and effect as if the Depositors had in fact subscribed their names as parties to this Agreement.

2. Each Depositor making a deposit as aforesaid shall be entitled to receive from the Depositary a deposit receipt specifying the principal amount of the Bonds so deposited. Such deposit receipt shall be substantially in the form hereto annexed, marked *Exhibit B* and made a part hereof. Each taker and holder of a deposit receipt issued hereunder by the Depositary, and any transferee thereof, by receiving such receipt thereby becomes a party to this Agreement and is bound by all of its provisions.

3. Any deposit receipts issued hereunder and the interest represented thereby shall be transferable in accordance with such regulations as may be adopted by the Depositary, and subject to the terms of this Agreement, only on the books of the Depositary by the registered holder thereof, or by his duly authorized attorney, upon presentation of such receipt to the Depositary, provided, however, that after the Exchange Offer shall have become effective pursuant to its terms the Depositary may, after notice by mail to the registered holders of the deposit receipts, close its books for the transfer of the deposit receipts, and thereafter no deposit receipt shall be transferable except in such instances and upon such

conditions as the Depositary may permit. Neither the Company nor the Depositary nor any agent of either shall be bound to take notice of, or shall in anywise be affected by any trust respecting the title or ownership of any deposit receipt, or the interest represented thereby, but they shall be entitled to treat the registered holder thereof as the absolute owner thereof for all purposes, unaffected by any notice or claim of notice to the contrary.

4. Every holder of a deposit receipt agrees that any transfer of the same shall operate as an assignment by the transferor of all his right, title and interest in and to the deposited Bonds and/or the Preferred Stock and cash deliverable under the Exchange Offer in respect thereof, represented by such deposit receipt. By delivering any deposit receipt issued hereunder to the Depositary for transfer, the holder thereof irrevocably constitutes and appoints the Depositary as his attorney to endorse in his name and to surrender any certificate or certificates issued in the name of such holder and representing the shares of the Preferred Stock deliverable to him in respect of the deposited Bonds represented by such deposit receipt, to the Company for transfer, and to receive in exchange therefor a certificate or certificates for the Preferred Stock, registered in the name of the Depositary or its nominee or nominees or in the name of the transferee of such deposit receipt. No transfer of any registered Bond deposited hereunder need be made or caused to be made by the Depositary upon the books of the Registrar of the Bonds unless and until the Exchange Offer shall become operative as to such Bond, provided, however, that on or after the transfer by any Depositor of a deposit receipt, or any part thereof, representing a deposited registered Bond or Bonds, such Bond or Bonds may, at the option of the Depositary, be transferred into the name of the Depositary or its nominee or nominees or into the name of such transferee or transferees.

5. In case any deposit receipt issued hereunder shall be mutilated, destroyed or lost, there may be issued a new receipt of the same serial number and of like tenor and representing the same amount of Bonds in exchange and substitution for the receipt mutilated, destroyed or lost, upon the delivery of such mutilated receipt or upon furnishing to the Depositary proof satisfactory to it of the destruction or loss of such receipt, and upon furnishing the Depositary and the Company indemnity satisfactory to them against any loss or damage for so doing.

6. Subject to the Exchange Offer becoming effective by the deposit hereunder of Bonds to the required amount and within the time limit provided in the Exchange Offer, the Company

irrevocably agrees with each and every Depositor, and with the Depositary, to acquire all outstanding Bonds deposited hereunder within the time limit so provided, and to pay therefor by issuing and/or delivering to the Depositary within 30 days after the Exchange Offer shall have become effective the Preferred Stock and by paying to the Depositary the cash (in each case for the account of the Depositors as their respective interests may appear), to the respective amounts required by the terms of the Exchange Offer to effect payment in full for all Bonds so deposited; and, subject as aforesaid, each holder of a deposit receipt irrevocably agrees to the delivery to the Company by the Depositary of the deposited Bonds represented by his deposit receipt upon receipt by the Depositary for his account of the Preferred Stock and cash deliverable in respect thereof under the terms of the Exchange Offer.

7. The certificates for the Preferred Stock deliverable to the Depositary, as above provided, shall be made out in the names of the registered holders of the deposit receipts as their respective interests therein may be certified to the Company by the Depositary; or, if the Depositary shall so request, all or any part of such certificates shall be made out in the name or names of the nominee or nominees of the Depositary. All cash payments required to be made to the Depositary as above provided, shall be paid in New York funds to the Depositary or upon its order. On receipt by the Depositary within 30 days after the Exchange Offer shall have become effective of certificates for the Preferred Stock and cash to the respective amounts required by the terms of the Exchange Offer in respect of all Bonds deposited hereunder within the time limit provided in the Exchange Offer, the Depositary shall deliver to the Company the Bonds deposited with it hereunder, with all coupons maturing after August 1, 1927, attached. After receipt by the Depositary of certificates for the Preferred Stock and cash as above provided, and upon surrender by the registered holders of their respective deposit receipts representing Bonds deposited hereunder, properly endorsed if required by the Depositary, the Depositary shall deliver to such holders certificates made out in the names of such registered holders for the number of full shares of the Preferred Stock to which they are respectively entitled and fractional scrip receipts, substantially in the form hereto annexed marked *Exhibit C* and made a part hereof, representing the fractional interests in shares of such Preferred Stock to which they are respectively entitled, together with the requisite amount in cash to effect the dividend adjustment, all on the basis provided in the Exchange Offer.

8. The Depositary shall not be under any duty or obligation while in possession of any of the Bonds deposited hereunder to present any of the Bonds or coupons thereto attached for payment or to take any action to endeavor to enforce the collection or payment thereof. The Depositary may, however, in its discretion, detach from the Bonds any coupons which shall have matured and present the same for payment and any amount received in payment of any such coupons shall be held by the Depositary subject to the provisions hereof. In case the Exchange Offer shall not have become effective or shall not have been consummated as therein provided, any cash received by the Depositary on the payment of any such coupons shall be delivered to the Depositors entitled to receive the same in lieu of the coupons so paid. In case the Exchange Offer shall become effective and shall be consummated as therein provided, the Company shall be entitled to receive credit on account of the amount payable in respect of the dividend cash adjustment provided for in the Exchange Offer to the extent of the amount received by the Depositary on payment of any coupons detached from the deposited Bonds.

9. In the event that the Exchange Offer shall not have become effective or shall not have been consummated as therein provided, a notice to that effect shall be mailed by the Depositary to the registered holders of deposit receipts representing the deposited Bonds, and the Bonds shall thereupon be returnable to the holders of deposit receipts, upon surrender thereof, properly endorsed, if required, to the Depositary, to the respective amounts represented by the deposit receipts, with all coupons maturing after August 1, 1927, attached, or, in case any of such coupons shall not be so attached, an amount in cash equal to the face amount of any detached coupons. The holders of deposit receipts agree, upon notice from the Depositary, to surrender such deposit receipts and to accept such Bonds, with cash for coupons detached, if any, in lieu thereof.

10. The Depositary, for itself and its successors, agrees to act as Depositary under this Agreement, but only upon the terms and conditions hereof, including the following, all of which shall bind the Company and the Depositors:

(*a*) The Depositary assumes no obligation to distribute any stock or to pay any money to any Depositor unless and until, and only to the extent, that the same shall be delivered or paid to it for such purpose.

(*b*) The Depositary shall not be responsible in any manner whatever for any of the representations and recitals contained

herein or in the Exchange Offer, or in any circular issued hereunder or in connection herewith.

(*c*) No statement, explanation or suggestion contained in any notice or circular which may be issued or advertised or otherwise distributed by the Depositary or by the Company or by anyone interested in the proposed adjustment, is intended or is to be accepted as a representation or warranty or as a condition of deposit of Bonds hereunder.

(*d*) The Depositary shall not be liable to anyone for any act or omission of any agent thereof or employee selected in good faith, nor for any error of judgment, or mistake of law, nor for any action taken in good faith in the belief that any certificate of stock or bond or any other document or paper, or any signature is genuine, nor for anything under or in connection with this Agreement other than wilful malfeasance.

(*e*) The Depositary and the Company, by the execution and delivery of this Agreement, assume no obligation, legal or equitable, expressed or implied, to any holder or registered owner of the Bonds who shall not deposit his Bonds hereunder, nor to any person whomsoever, other than the holders of deposit receipts issued in accordance with the terms of this Agreement.

(*f*) Depositors shall not be liable for any costs, charges or expenses whatever in connection with the deposit of Bonds, the purchase thereof by the Company hereunder or the return thereof to the Depositors, and the Depositary shall look solely to the Company for reimbursement of its costs, charges and expenses and compensation for its services hereunder, all of which the Company agrees to pay to the Depositary upon its request.

(*g*) The Depositary may advise with counsel (who may be of counsel for the Company) and the opinion of counsel shall be full protection and justification of the Depositary for anything done or omitted or sought to be done by it in accordance with such opinion.

(*h*) The Depositary shall not, by the deposit of Bonds hereunder, obtain any title to such Bonds so deposited, nor any interest therein or obligation in respect thereof other than the custody and disposition thereof and of the coupons thereto attached in accordance with the terms of this Agreement.

(*i*) The Depositary, and any of its officers, directors or agents, may be or become Depositors and may deposit Bonds hereunder, and shall in such event be entitled to all the benefits and rights conferred upon Depositors under any provisions

hereof or of the Exchange Offer, the same as though the Depositary were not acting as such hereunder; and the Depositary may make any contract or arrangement with the Company or with any bankers or banking group interested in the Bonds or may be a member of or otherwise interested in any committee, group or syndicate which may contract with the Depositors or any of them or with the Company or be formed in furtherance of or in connection with the consummation of the Exchange Offer, with the same freedom as though the Depositary were not acting as such hereunder; and the Depositary may act as Trustee under the mortgage securing the Bonds and act with the same freedom thereunder as though the Depositary were not acting as such hereunder.

11. Each holder of a deposit receipt, by the surrender of his receipt and acceptance of the certificates of Preferred Stock, fractional scrip receipts, and cash distributed by the Depositary upon the consummation of the Exchange Offer as herein provided, or in the event that such offer shall not become operative as therein provided, upon return of the amount of the Bonds designated in the receipt, with cash for coupons detached, if any, releases and discharges the Depositary and the Company from all liability and accountability of every kind, character and description whatsoever.

12. The Depositary may appoint one or more agents to accept and receive deposits of Bonds for the Depositary and to deliver deposit receipts therefor and for other purposes connected herewith.

13. All notices to the Depositors under this Agreement may be given by mail addressed to their respective addresses as the same appear on the books of the Depositary or by publication thereof twice in each week for two successive weeks in a newspaper of general circulation published in the Borough of Manhattan, City of New York. Any notice whatsoever, when so given by the Company or by the Depositary, may be taken and construed as though personally served upon all holders of deposit receipts as of the date of the mailing thereof or of the first publication thereof.

14. This Agreement and all the provisions herein shall extend to and be obligatory upon the parties hereto, and their, and each of their survivors, heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, International Paper Company has caused this Agreement to be duly executed by its proper officers and has deposited the same with the Depositary specified herein; The Chase National Bank of the City of New York has caused this

Agreement to be duly executed by its proper officers; and the parties of the third part, the Depositors, have deposited their Bonds hereunder, all as of the day and year first above written.

INTERNATIONAL PAPER COMPANY,
By A. R. GRAUSTEIN,
President.

ATTEST:
F. G. SIMONS,
Secretary.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
By G. E. WARREN,
Vice-President.

ATTEST:
R. C. SMITH,
Assistant Cashier.

EXHIBIT A

EXCHANGE OFFER

November 1, 1927

To the Holders of Continental Paper & Bag Mills Corporation First and Refunding Mortgage 6½% Twenty-Year Sinking Fund Gold Bonds, Series A:

International Paper Company hereby agrees, subject to the conditions hereof, to purchase from the holders of the above-mentioned Bonds who shall accept this offer in the manner and within the time limit hereinafter provided, all of such Bonds in respect of which this offer shall be so accepted, and to issue and/or deliver in payment therefor the 7% Cumulative Preferred Stock (of the character now outstanding) of International Paper Company, at the rate of .825 of a share of such Preferred Stock for each $100 principal amount of such Bonds, with all coupons maturing after August 1, 1927, attached, and to make an appropriate dividend adjustment in cash so that each such Bondholder exchanging his Bonds for such Preferred Stock will be entitled to receive an amount equal to dividends at the rate of 7% per annum on his interest in the shares deliverable under the offer, accrued from August 1, 1927, to the date from which the shares of Preferred Stock commence to draw dividends, *namely*, the regular quarterly dividend payment date next preceding the date of the issuance and/or delivery of such Preferred Stock.

No fractional shares of such Preferred Stock will be delivered by International Paper Company on any such exchange, but arrangements have been effected with the Depositary under the

Deposit Agreement hereinafter mentioned whereby the total number of shares of such Preferred Stock representing the sum of all fractional interests deliverable to all Bondholders accepting this Exchange Offer will be delivered to and held by such Depositary, against which it will issue to the Bondholders entitled to receive the same its own fractional scrip receipts entitling the holders, upon surrender thereof to the Depositary with one or more similar fractional scrip receipts, together aggregating one full share, to receive a certificate for one share of such Preferred Stock.

This Exchange Offer is conditioned upon its acceptance, in the manner hereinafter provided, on or before *December 15, 1927,* by holders of such Bonds owning in the aggregate at least 90% of the total principal amount of such Bonds now outstanding, with the right on the part of International Paper Company, at its option, to extend such date by not more than 90 days in the aggregate and/or to declare this Exchange Offer effective upon acceptance by the holders of a smaller percentage of the outstanding Bonds, by delivering written notice of its intention so to do to the Depositary hereinafter mentioned, on or prior to the date when the period for the acceptance of this Offer would otherwise expire.

For the purpose of providing a method for the acceptance of this Exchange Offer and for the consummation thereof, if it shall become effective on the conditions above provided, International Paper Company has entered into an agreement bearing even date herewith, with *The Chase National Bank of the City of New York,* as Depositary, copies of which may be had upon application to such Depositary or to International Paper Company. Any holder of such Bonds desiring to accept this Exchange Offer may do so only by delivering his Bonds, with all coupons maturing after August 1, 1927, attached, within the time limit above provided, to such Depositary at its principal office, *No. 57 Broadway, New York City,* for deposit under the above-mentioned Deposit Agreement, on receipt of which the Depositary will issue its deposit receipt therefor, exchangeable, if this Exchange Offer shall have become effective as above provided, for the Preferred Stock and cash dividend adjustment on the basis above set forth.

If this Exchange Offer shall become effective by acceptance as above provided, International Paper Company agrees, within 30 days thereafter, to deliver to such Depositary, upon receipt from it of the deposited Bonds with all coupons maturing after August 1, 1927, attached (or with cash or credit for coupons detached, if any), the Preferred Stock required for the purpose of effecting

the exchange and the cash required to effect the dividend adjustment as above set forth, in respect of all the Bonds so delivered, and the Depositary will then make delivery of the Preferred Stock (and its own fractional scrip receipts for fractional interests therein) to the record holders of its deposit receipts, or their registered assigns, on surrender thereof, and will also pay to them their *pro rata* share of the cash so deposited to effect the dividend adjustment provided for in this Exchange Offer.

All holders of the above-mentioned Bonds desiring to accept this Exchange Offer should act promptly in order that the Offer may become effective at an early date.

INTERNATIONAL PAPER COMPANY,
By A. R. GRAUSTEIN,
President.

EXHIBIT B

No. ..... $.....
Principal Amount
of Bonds

Deposit Receipt
for
First and Refunding Mortgage 6½% Twenty Year Sinking Fund Gold Bonds, Series A,
of
CONTINENTAL PAPER & BAG MILLS CORPORATION

Deposited under Deposit Agreement dated as of November 1, 1927, in acceptance of the terms of an offer of International Paper Company for the exchange of its own 7% Cumulative Preferred Stock for said bonds, as set forth in a circular letter dated as of November 1, 1927, addressed to the holders of said bonds, the original of which is lodged with and may be inspected at the principal office of the Depositary.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK as Depositary under said Deposit Agreement hereby certifies that ....., or assignors, has deposited with it under said Deposit Agreement, pursuant to the terms of said Exchange Offer, bonds of the above issue with all coupons maturing after August 1, 1927, attached, bearing numbers as follows:

.....

of the aggregate principal amount of..... dollars, as set forth above.

The holder hereof, by receiving this receipt, assents to and is

bound by the provisions of said Exchange Offer and said Deposit Agreement, and irrevocably authorizes the undersigned Depositary to exchange said deposited bonds, in case said Exchange Offer shall become effective in accordance with its terms, for the 7% Cumulative Preferred Stock of International Paper Company on the basis of .825 of a share of such Preferred Stock for each $100 principal amount of said deposited bonds, together with a dividend adjustment in cash on the basis set forth in said Exchange Offer. Upon surrender of this receipt, duly endorsed if required, to the undersigned Depositary at its principal office, No. 57 Broadway, Borough of Manhattan, New York City, N. Y., the holder hereof shall be entitled (a) if said Exchange Offer shall have become effective and shall have been consummated in accordance with its terms, to receive a certificate or certificates, in temporary or definitive form, for the number of full shares of the 7% Cumulative Preferred Stock of International Paper Company deliverable in respect of said deposited bonds on the basis set forth above, and a fractional scrip receipt of the undersigned representing the fraction of a share, if any, of such Preferred Stock so deliverable in respect of said deposited bonds, together with an amount in cash necessary to effect the dividend adjustment on the basis set forth in said Exchange Offer, when certificates for shares of such stock and such cash shall have been received by the undersigned as provided in said Deposit Agreement; or (b) if, as provided in said Deposit Agreement, said Exchange Offer shall not have become effective or shall not have been consummated within the time limit therein provided, namely within 30 days after said Exchange Offer shall have become effective, to the return of bonds of the above-mentioned issue to the aggregate principal amount of said bonds represented by this receipt, with all coupons maturing after August 1, 1927, attached, or, in case any of such coupons shall not be so attached, an amount in cash equal to the face amount of such coupons. The undersigned shall have the right at any time to set aside and hold a specific certificate or certificates for shares of the 7% Cumulative Preferred Stock of International Paper Company for delivery against the surrender of this receipt.

This receipt, and all rights and interests evidenced hereby are transferable, subject to the terms and conditions of said Deposit Agreement, only on the books of the undersigned Depositary on the surrender hereof properly endorsed for transfer by the registered holder in person or by his attorney thereunto duly authorized, but until so transferred the undersigned Depositary and International Paper Company may treat the registered holder hereof as

the owner of the rights and interests represented hereby and shall not be affected by any notice to the contrary.

Dated, New York,

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
Depositary,

By .....
Trust Officer.
Assistant Cashier.

EXHIBIT C

No. ———— of One Share
1000

FRACTIONAL SCRIP
for
7% CUMULATIVE PREFERRED STOCK
of
INTERNATIONAL PAPER COMPANY.

THIS IS TO CERTIFY that the bearer hereof on surrender to the undersigned at its principal office in the Borough of Manhattan, City of New York, N. Y., of this scrip receipt representing ————
1000
of one share of the 7% Cumulative Preferred Stock of INTERNATIONAL PAPER COMPANY and other like scrip receipts together representing not less than one full share of such Preferred Stock, will be entitled to receive in exchange therefor (1) a certificate for the number of full shares of such Preferred Stock represented by the scrip receipts so surrendered, (2) a scrip receipt for any remaining fractional interest, (3) an amount in cash equal to the dividends, if any, which shall have been received by the undersigned in respect of the shares of the Preferred Stock so delivered, and (4) an order on said International Paper Company for the payment of any dividends declared and payable to holders of record prior to such exchange but payable thereafter, which the undersigned may be entitled to receive in respect of the Preferred Stock so delivered. If, however, within a period of one year after their receipt, any shares of the Preferred Stock deliverable upon surrender of this and other similar fractional scrip receipts have not been delivered, the undersigned may sell such shares on the New York Stock Exchange or other Stock Exchanges upon which the said shares may then be listed, or may dispose of the same at private sale, but in such event at not less than the average market price therefor on the New York Stock Exchange on the day preceding any such sale, and thereafter hold the cash value of such

shares for delivery ratably to the holders of this and other fractional scrip receipts outstanding. The sums of money (if any) receivable by the holder of this receipt will be due and payable without interest to such holder solely as an ordinary creditor, and the undersigned shall not be charged with any obligations of a trustee in respect thereof.

This scrip receipt does not entitle the holder hereof to any voting or other rights as a stockholder of said International Paper Company or, except as aforesaid, to receive any dividends.

This scrip receipt and the interest represented hereby are transferable by delivery of this receipt, and every owner and holder of this receipt by accepting or holding the same consents and agrees that the undersigned may treat the bearer hereof as the absolute owner for all purposes and shall not be affected by any notice to the contrary.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
by

.....
Trust Officer.
Assistant Cashier.

Dated, New York, .

FORM 433

OPTION NOTICE

TO THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,
DEPOSITARY UNDER AGREEMENT DATED NOVEMBER 1, 1927.

The undersigned, having deposited under the said Agreement and pursuant to the Exchange Offer, First and Refunding Mortgage 6½% Twenty-year Sinking Fund Gold Bonds, Series A, of Continental Paper & Bag Mills Corporation, bearing numbers as follows:

of the aggregate principal amount of $ hereby notifies, through you, Chase Securities Corporation, Bankers Trust Company, Redmond & Company, Continental and Commercial Company and The Union Trust Company, Cleveland (hereinafter called the Bankers), that the undersigned irrevocably elects to exercise the option of selling to the Bankers the Preferred Stock and cash dividend adjustment represented by the above-mentioned Bonds upon the terms of the purchase offer which was tendered

in the letter addressed by the Bankers to the holders of such Bonds under date of November 1, 1927.

Pending the consummation of the Exchange Offer, you will hold the deposit receipt for the said Bonds for account of the Bankers or for my account as our respective interests may hereafter appear, and if and when the said shares of Preferred Stock and cash dividend adjustment shall have been received by you pursuant to the terms of the Exchange Offer, and payment shall have been made to you for my account of the purchase price, you will endorse the deposit receipt to the Bankers, or upon their order, and make delivery accordingly of the Preferred Stock, cash dividend adjustment and any fractional scrip receipt issued in connection therewith.

Payment of the purchase price shall be made by your check mailed to me at the address below.

Witness .....

..... Address.....

.....

Dated

FORM 434

LETTER TO BONDHOLDERS

CONTINENTAL PAPER & BAG MILLS CORPORATION
FIRST AND REFUNDING MORTGAGE 6½ PER CENT TWENTY YEAR SINKING FUND GOLD BONDS, SERIES "A"

NEW YORK, N. Y., December 1st, 1927.

GENTLEMEN:

Under date of November 1, 1927, we forwarded to you copies of the offer made by International Paper Company to exchange its 7% Cumulative Preferred Stock for the above mentioned Bonds. Since the date of that letter this Preferred Stock has substantially appreciated in market value, with a corresponding increase in the attractiveness of the offer of exchange. On November 1st the market was approximately 103 and now it is approximately 110½, with the consequence that the Exchange Offer today is the equivalent of about 91 flat for the Bonds, as contrasted with 85 at the time the offer was made. There has been a like appreciation in the market value of the Bonds. Whereas in September, 1927, they were selling at approximately 75, they are today selling at 87¾. The recent rise in the market value of the Bonds is, we believe, due solely to the Exchange Offer and the opportunity thus

presented to exchange the Bonds for the Preferred Stock at the value indicated by the present quotations. We also believe that should the offer lapse, the market value of the Bonds would undoubtedly substantially decline.

This offer is conditioned upon its acceptance by December 15, 1927, unless International Paper Company extends that date, by bondholders owning in the aggregate at least ninety per cent of the total principal amount of the Bonds outstanding. To date there has not been an acceptance by the required percentage, and there is no assurance that International Paper Company will extend the offer beyond the date specified. Under the circumstances it is important that bondholders deposit their holdings without delay if they wish to avail themselves of the benefit of the exchange.

Believing it to be for the best interests of the bondholders to accept the offer, we request that you actively cooperate with us in our efforts to bring its advantages to their attention, by getting in touch with those to whom you sold these Bonds as a member of the Syndicate through which this issue was distributed in 1924. It is our opinion that the logical and proper point of contact in this connection should be between the former Syndicate members and their customers and we have therefore made no effort up to the present time to communicate with the bondholders direct. The alternative of acceptance of this offer, which apparently many bondholders do not appreciate, is that they will have the risk of an expensive receivership and foreclosure and of the problems incident to a reorganization apparently requiring a substantial amount of new capital. In this connection it should be noted that the Sinking Fund payment due December 1st, 1927, in respect of these Bonds has not been made.

We are forwarding to you under separate cover a few copies of a letter addressed by the undersigned to the Holders of the Bonds, together with copies of its enclosures. Additional copies of these forms will be furnished you upon request to Chase Securities Corporation.

Very truly yours,

CHASE SECURITIES CORPORATION,
BANKERS TRUST COMPANY,
REDMOND & CO.,
CONTINENTAL NATIONAL COMPANY,
THE UNION TRUST COMPANY, CLEVELAND.

XXXI

STATE AND FEDERAL REGULATION

1. Need of Regulation

The regulation of corporations, partnerships, associations and individuals engaged in business is aimed primarily at the prevention of monopoly and unfair competition. The Interstate Commerce Act of 1887 was designed to regulate competition among railroads. The Sherman Anti-Trust Act was designed to prevent combinations in restraint of trade. Most of the states have also passed anti-trust legislation. Among the forms of agreement against which such legislation is aimed are "gentlemen's agreements" to restrict output or to divide the field of trade, pools, and trusts.

The common law governs in the absence of statutes, but in some instances the necessity has been felt for a law formulating definitely the policy to be followed, also establishing the necessary administrative machinery to make it effective.

2. The Sherman Act

The Sherman Anti-Trust Act was approved July 2, 1890. The essential provisions thereof were as follows:

> 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

This law applies only to such commerce as comes under the jurisdiction of Congress, viz., interstate commerce, in-

cluding foreign commerce, and commerce in and with the territories and the District of Columbia.

2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on convicton thereof, shall be punished as provided in sections 1 and 3 of the act.

The application and interpretation of the Sherman Act has been questionable and indecisive. Among the important cases decided under the act were the Sugar case, *U. S.* v. *E. C. Knight,* 156 U. S. 1; the *Debs case,* 158 U. S. 564; the *Trans. Missouri Freight Association case,* 166 U. S. 290, and the *Joint Traffic Association* case; the Northern Securities case, *Nor. Sec. Co.* v. *U. S.,* 193 U. S. 197; and the Standard Oil case, *Stand. Oil Co.* v. *U. S.,* 221 U. S. 1.

3. Amendments to Sherman Act

The Sherman Anti-Trust Act has been amended several times. The most notable amendment was the Clayton Act passed in 1914 and the Federal Trade Commission Act passed in the same year, creating the Federal Trade Commission and prohibiting unfair methods of competition.

4. The Clayton Act

The Clayton Act was approved October 15, 1914. It begins with a statement of what constitutes the "anti-trust laws," viz.:

1. "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890—the so-called Sherman Act.

2. Sections 73 to 77, inclusive, of an act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August 27, 1894.

3. An act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide

revenue for the Government, and for other purposes' " approved February 12, 1913.

4. The Clayton Act itself.

The essential features of the Clayton Act are explained below:

Commerce Defined. Commerce, as used in the Act "means trade or commerce among the several states and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to the Philippine Islands."

Price Discrimination. Section 2 of the Act provides: "That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: And *provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or

merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

Contracts Tending to Create Monopoly. Section 3 declares unlawful leases, sales and contracts for sale of goods, wares, etc., patented or unpatented; or fixing a price charged therefor, or discount from, or rebate upon such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, etc., of a competitor or competitors of the lessor or seller, if the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Suits under Anti-Trust Laws. Section 4 provides that those injured in business or property by reason of anything forbidden in the anti-trust laws may bring suit in any district court of the United States in the district in which defendant resides, or is found, or has an agent. The damages collectible are threefold the loss thus sustained plus cost of suit and a reasonable attorney's fee.

Labor Not a Commodity. Section 6 provides "That the labor of a human being is not a commodity or article of commerce." This section goes on to specify that organizations of laborers, agriculturalists and horticulturalists, and so on, are not forbidden by the act.

Intercorporate Affiliations. Section 7 is aimed against the control, direct or indirect, of one corporation by another corporation, "where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce." The law does not prevent the purchase by one company of the stock of another company for investment purposes, nor does it prohibit the organization by a corporation of subsidiary companies "for the actual carrying on of their immediate lawful business, or the natural and legitimate

branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporation, when the effect of such formation is not to substantially lessen competition."

Bank Directors, Officers and Employees. Section 8 is aimed against bank directors, officers and employees holding positions in more than one bank, under certain specified conditions.

Common Carriers and Competitive Bidding. Section 10 has for its object the protection of competitive bidding as applied to common carriers.

Authority to Enforce. The authority to enforce compliance with sections two, three, seven, and eight of the act is vested in the Interstate Commerce Commission where applicable to common carriers; in the Federal Reserve Board where applicable to banks, banking associations and trust companies; and in the Federal Trade Commission where applicable to other kinds of commerce. The manner of exercising this authority is set forth in Section 11.

Actions, Injunctions, etc. Provisions regarding suits, proceedings, injunctions, etc., are detailed in Sections 12 to 26, inclusive.

5. Blue Sky Laws

Introductory. Practically all of the states have enacted statutes regulating the issuance and sale of securities. These are popularly known as "Blue Sky Laws." The first "Blue Sky Law" was enacted in Kansas in 1911. The legislation on the subject is not uniform and there is no immediate prospect of making it so. The purpose of such legislation is to throttle schemes for the sale of worthless securities by promoters. *Burns* v. *Bauer,* 36 Cal. App. 251. Such legislation has a restraining influence on persons inclined to speculate in worthless securities.

Constitutionality. A state, under its power, may regulate the sale of investment securities. *King* v. *Commonwealth,* 246 S. W. 162. Nevertheless, Blue Sky Laws have been

declared unconstitutional because they were not considered a proper exercise of the police power. A Michigan Blue Sky Law was declared unconstitutional on the ground that it served to deprive of property or liberty without due process of law. *Ala. & N. O. Tr. Co.* v. *Doyle,* 210 Fed. 173. A later Michigan law was held constitutional. *Merrick* v. *N. W. Halsey & Co.,* 243 U. S. 569. It is a proper exercise of the police power to require a license and provide for the revocation thereof. A law forbidding dealers from disposing of securities within a state without first securing a license is not an undue exercise of police power. *Bk. of Bernie* v. *Blades,* 247 S. W. 806. This is true notwithstanding the Fourteenth Amendment to the United States Constitution, which holds that no person shall be deprived of his life, liberty, or property without due process of law, or denied the equal protection of the laws. *Hall* v. *Geiger-Jones Co.,* 242 U. S. 540.

The fact that the business of an investment company is interstate does not render a Blue Sky Law void as being in violation of the commerce clause of the Constitution. *Stand. Home Co.* v. *Davis,* 217 Fed. 904. If, however, it can be shown that the Blue Sky Law imposes a direct burden on interstate commerce it may be held invalid. *W. R. Compton Co.* v. *Allen,* 217 Fed. 904. If the burden is indirect or incidental the law imposing it will be upheld. *Merrick* v. *N. W. Halsey & Co.,* 242 U. S. 569.

The Blue Sky Law must apply alike to all corporations coming under its jurisdiction and which are similarly conditioned. *Ex Parte Taylor,* 68 Fla. 61. In Illinois it was held that Sec. 5, par. 3 of the 1919 Illinois Securities Law exempting securities sold by or to any bank, trust company or insurance company, or association organized under any law of the state or of the United States, does not grant a special privilege in violation of constitutional limitations. Also, in the same case, it was held that Sec. 4, par. 4 of the same law, exempting securities dealt in on the New York, Chicago and other stock exchanges, was not unjustly

discriminatory. *Stewart* v. *Brady,* 300 Ill. 425, 569. The Michigan law exempting securities listed in any standard manual approved by the State Securities Commission was upheld in *Merrick* v. *N. W. Halsey & Co.,* 242 U. S. 569.

The division of securities into classes based on the length of time concerns have been in operation and on earnings shown was declared a reasonable standard for determining the value of an enterprise in Illinois. *Stewart* v. *Brady,* 300 Ill. 425.

A Blue Sky Law must not discriminate against non-residents. *Compton Co.* v. *Allen,* 216 Fed. 537.

In general, the creation of commissions, or the granting of power to control and regulate investment companies to state officials already in existence, has been upheld as a constitutional delegation of power.

In Iowa is was held that a Blue Sky Law which gives to the party who is denied a permit, or whose permit is cancelled, a right to appeal to the State Executive Council, sufficiently complies with the constitutional guaranties of due process of law.

6. Construction and Operation of Blue Sky Laws

Laws requiring investment companies to secure a license are penal in nature and should be strictly construed. *Somers* v. *Comml. Financ. Corp.,* 139 N. E. 837. Being penal, such laws cannot be extended by the courts to include cases omitted by the legislature. *Gutterson* v. *Pearson,* 152 Minn. 482.

Foreign corporations must comply with the provisions of the law of the state in which they operate, and if they are of the security selling type they must comply with the provisions of the Blue Sky Law.

Blue Sky Laws do not apply to an owner of securities who is not a dealer therein, and he may sell his securities without complying with the requirements of such laws. *Edwards* v. *Ioor,* 205 Mich. 617.

Many kinds of contracts do not fall under the jurisdiction

of Blue Sky Laws. In *Schomoyer* v. *Van Hosen, et al.*, 111 Kan. 759, it was held that a written contract to sell a patent right did not come within the jurisdiction of the part of the Blue Sky Law requiring a permit from the bank commissioner for sale of speculative securities, securities being defined as "stock certificates, shares, bonds, debentures, certificates of participation, contracts, contracts or bonds for the sale and conveyances of land on deferred payments or installment plan, or other instruments in the nature thereof by whatever name known and called." In Kentucky it was held that a similar provision did not apply to the sale by a wholesale grocer of service contracts to retail dealers. *Lewis* v. *Creasey Corp.*, 248 S. W. 1046.

7. Effect of Non-Compliance with Law

A sale of stock in violation of a Blue Sky Law is void. *Edwards* v. *Ioor*, 205 Mich. 617. The transferee may recover the consideration paid upon the corporation's refusal to restore such consideration. *Ibid.* If the laws of a state forbid a foreign corporation to sell or attempt to sell stock therein without a license a subscription to such stock is void. *Rhines* v. *Skinner Pack. Co.*, 187 N. W. 874. In Missouri, although the Blue Sky Law does not prohibit making of contracts in that state with residents thereof by a foreign corporation which has not secured a license it is the policy of that state to hold such contracts void. *Rhines* v. *Skinner Pack. Co.*, 187 N. W. 874. Subscription contracts made with a corporation which has not complied with the Blue Sky Law are void. *Goodyear* v. *Meaux*, 143 Tenn. 287.

Where notes are given in purchase of stocks sold in violation of the Blue Sky Law they are void in the hands of a party receiving them with notice thereof but not in the laws of a third party without notice. *Pitman* v. *Walker*, 187 Cal. 667. *McGregor* v. *Lamont*, 225 Ill. App. 451.

If one purchases stock from a corporation which has failed to comply with the Blue Sky Law he is entitled to recover the amount paid, but his status is the same as that of other

creditors, not that of a preferred creditor. *Howard* v. *Corn Belt Farmers' Coop. Asso.*, 225 Ill. App. 449.

Federal Trade Commission

8. Practice Before Federal Trade Commission

The Federal Trade Commission maintains its principal office at Washington, D. C., but may meet and exercise its powers at any other place; and through one or more members or such examiners as it may appoint, may prosecute inquiries anywhere in the United States. Sessions are held for hearing contested proceedings, making orders, and transacting other business. For the transaction of business three members constitute a quorum.

Application to the commission for institution of proceedings in respect to any violation of law over which the commission has jurisdiction may be made by any person, partnership, corporation or association. Such application must be in writing, signed by or in behalf of the applicant, and should contain a brief statement of facts constituting the alleged violation of law, the name and address of the applicant and of the party complained of.

If, after investigation, the commission finds reason to believe that the law over which it has jurisdiction has been violated and if it appears that a proceeding by it in respect thereof would be to the interest of the public, it issues and serves upon the party complained of a complaint stating its charges and containing a notice of a hearing to be held at least 40 days after service of said complaint.

In case respondent desires to contest the proceedings he must, within thirty days from time complaint is served, unless the commission extends the time, file his answer with the commission. Such answer should contain a brief statement of facts, constituting the ground of defense. Respondent must admit or deny or explain each of the facts alleged in the complaint, unless without knowledge thereof, in which case he shall so state. Allegations in the complaint not

specifically denied, unless a statement is made in the respondent's answer that he is without knowledge, are deemed to be admitted by respondent as being true.

If respondent does not wish to contest the proceeding he may so state, or that he consents that the commission may make, enter and serve upon him an order to cease violations of the law alleged in the complaint, or that he admits all of the allegations made in the complaint to be true.

If respondent fails to file an answer within the time provided, such failure is deemed to be an admission of all allegations of the complaint.

In making answer, three copies thereof must be furnished. These must be signed in ink and give office and post office address of the signer. The answers must be typewritten or printed, and certain specifications as to size of paper used must be observed.

Extensions of time are granted at the discretion of the commission.

For information relative to witnesses and subpoenas, time for taking testimony, objections to evidence, motions, hearings on investigations, hearings before examiners, depositions in contested proceedings, documentary evidence, etc., see *Rules of Practice and Proccdure and Statements of Policy,* Federal Trade Com., January 1, 1928, pp. 3-11.

9. Filing Briefs with Federal Trade Commission

Briefs should be filed with the secretary of the commission. Those on behalf of the commission must be accompanied by the required proof of service, or the mailing of same by registered mail to the respondent or its attorneys at the proper address. Twenty copies of each brief shall be furnished, unless otherwise ordered. Briefs must contain:

1. A concise abstract or statement of the case.
2. A brief of the argument, exhibiting a clear statement of the points of facts or law to be discussed, with the reference to the pages of the record, and the authorities relied upon in support of each point.

For further details see *Rules of Practice and Procedure and Statements of Policy,* Federal Trade Com., January 1, 1928, pp. 9-10.

10. Settlement of Cases by Stipulation

The law establishing the Federal Trade Commission has for its object the ending of unfair methods of competition. It also provides for issuance of a complaint and a trial; but in addition it is provided that a trial is necessary only when necessary for the public interest, thus granting the commission judicial discreton in each case. Consequently some cases are settled by stipulation, without resort to formal trial. When, however, the business involved is fraudulent the commission maintains that the protection of the public demands that the regular procedure by complaint and order shall prevail. "Indeed there are some cases where that is the only course which would be of any value at all. As for instance the so-called 'blue sky cases' and all such where the business itself is inherently fraudulent or where a business of a legitimate nature is conducted in such a fraudulent manner that the commission is warranted in the belief that no agreement made with the proposed respondent will be kept by him."

As to permitting hearings by proposed respondents before a complaint is issued the commission has adopted the following rule:

> Except as hereinafter provided, the board of review, before it shall recommend to the commission that a complaint issue in any case, shall afford the proposed respondent a hearing to show cause why a complaint should not issue. Such hearing shall be informal in character and shall not involve the taking of testimony. The proposed respondent shall be permitted to make or submit such statements of fact or law as he shall desire. The extent and control of such hearing shall rest with a majority of the board. The respondent shall have three weeks' notice of the time and the place of hearing, to be served on the respondent by the secretary of the commission.
>
> *Provided,* That if in any case the majority of the board shall

be of opinion that a hearing is not required because (*a*) the respondent has been fully interviewed and has given the examiner every fact or argument that could be offered as a defense, or (*b*) the practice has been fully established and is of such character that in the nature of the case nothing could be adduced in mitigation, or (*c*) to delay the issuance of a complaint to afford a hearing might result in a loss of jurisdiction, or (*d*) otherwise unnecessary or incompatible with the public interest, the board may transmit the case to the commission, via the docket section, with its conclusions and recommendations, without a hearing as in this rule provided.

11. Commission's Policy as to Publicity

Where cases are settled by stipulation before complaint is issued, no statement regarding such settlement is issued for publication. If a complaint is issued, no statement is made for publication until after the final determination of the case; but "after a complaint has been issued and served, the papers in the case shall be open to the public for inspection, under such rules and regulations as the secretary may prescribe." The reason for withholding publicity where cases are settled by stipulation without complaint is that the so-called applicant or complaining party has never been regarded as a party in the strict sense. The commission acts solely in the public interest, never for any applicant; and it is its rule not to divulge an applicant's name.

12. Trade-Practice Conferences

The purpose of trade-practice conferences is to permit the representatives of an industry to assemble voluntarily, either at their own expense or that of the commission, but under the latter's auspices, to consider unfair practices in their respective industries, and to agree collectively upon and provide for their abandonment. One industry is dealt with as a unit. Practices and methods, not individual offenders, are considered. The industry in question is regarded as a "friend of the court" rather than as an accused party. A given date is determined upon for the discontinuance of the

unfair methods, thus placing all competitors as nearly as possible on an equal basis. "It performs the function as a formal complaint without bringing charges, prosecuting trials, or employing any compulsory process, but multiplies results by as many times as there are members in the industry who formerly practiced the methods condemned and voluntarily abandoned."

"The beneficial results of this form of procedure are now well established, and the commission is always glad to receive and consider requests for the holding of trade-practice conferences." Those interested in such conferences should apply to the commission for a pamphlet entitled *Trade Practice Conferences,* which sets forth the history, theory, and working of this procedure. Various trade-practice conferences held in the past are described.

Form 435

Text of Federal Trade Commission Act

An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not

impair the right of the remainng commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of $10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department

of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any other State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company, or association, incorporated or unincorporated, without shares of capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint, stating its charges in that respect, and containing a notice of a hearing upon a day at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation, resides or carries on business, for the enforcement of its order, and shall certify and file with its application, a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall

cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve

any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 6. That the commission shall also have power—

(*a*) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(*b*) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(*c*) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application

of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(*d*) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(*e*) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(*f*) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(*g*) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(*h*) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 8. That the several departments and bureaus of the Gov-

ernment when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided,* That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United

States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be

FORM 436

VOUCHER CHECK

GENERAL ELECTRIC COMPANY
SCHENECTADY, N. Y.

IN CORRESPONDENCE REFER TO OUR VOUCHER NO. GO-

INVOICE DATE	DETAILS	AMOUNT	TOTAL

Acceptance and endorsement of attached check will acknowledge payment in full of invoices listed

CERTIFIED CORRECT

APPROVED FOR PAYMENT

T.D-158 15m 7-6-27

DETACH BEFORE DEPOSITING CHECK

CHECK NO.—DATE

GENERAL ELECTRIC COMPANY
SCHENECTADY, N. Y.

PAY

TO THE ORDER OF

CANCELLED

TO

GENERAL ELECTRIC COMPANY
BY

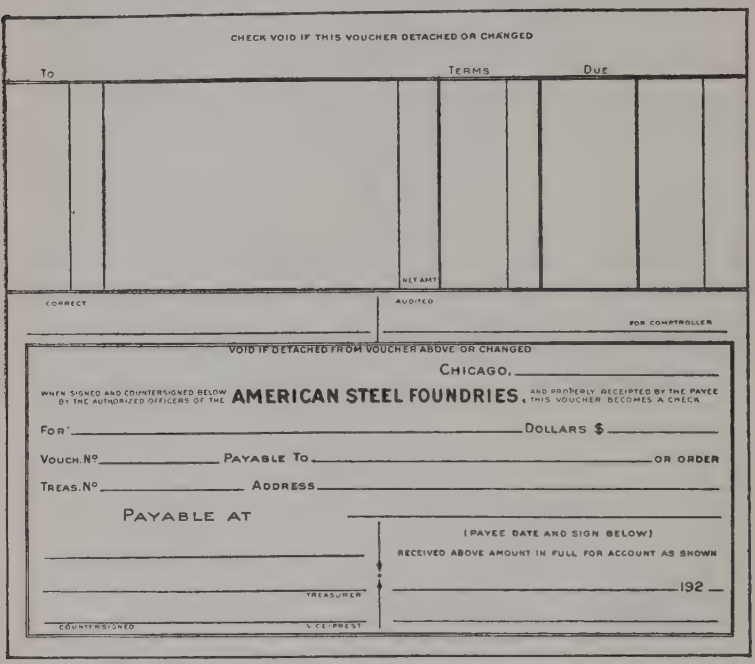
COUNTERSIGNED

FOR TREASURER

FOR AUDITOR OF DISBURSEMENTS

FORM 437

VOUCHER CHECK (ANOTHER FORM)


CHECK VOID IF THIS VOUCHER DETACHED OR CHANGED

To

TERMS

DUE

NET AMT

CORRECT

AUDITED

FOR COMPTROLLER

VOID IF DETACHED FROM VOUCHER ABOVE OR CHANGED

CHICAGO, _____

WHEN SIGNED AND COUNTERSIGNED BELOW BY THE AUTHORIZED OFFICERS OF THE **AMERICAN STEEL FOUNDRIES**, AND PROPERLY RECEIPTED BY THE PAYEE THIS VOUCHER BECOMES A CHECK

FOR _____ DOLLARS $ _____

VOUCH. Nº _____ PAYABLE TO _____ OR ORDER

TREAS. Nº _____ ADDRESS _____

PAYABLE AT _____

(PAYEE DATE AND SIGN BELOW)

RECEIVED ABOVE AMOUNT IN FULL FOR ACCOUNT AS SHOWN

_____ 192 __

TREASURER

COUNTERSIGNED

V. PRES.

paid out of the appropriation for the expenses of the courts of the United States.

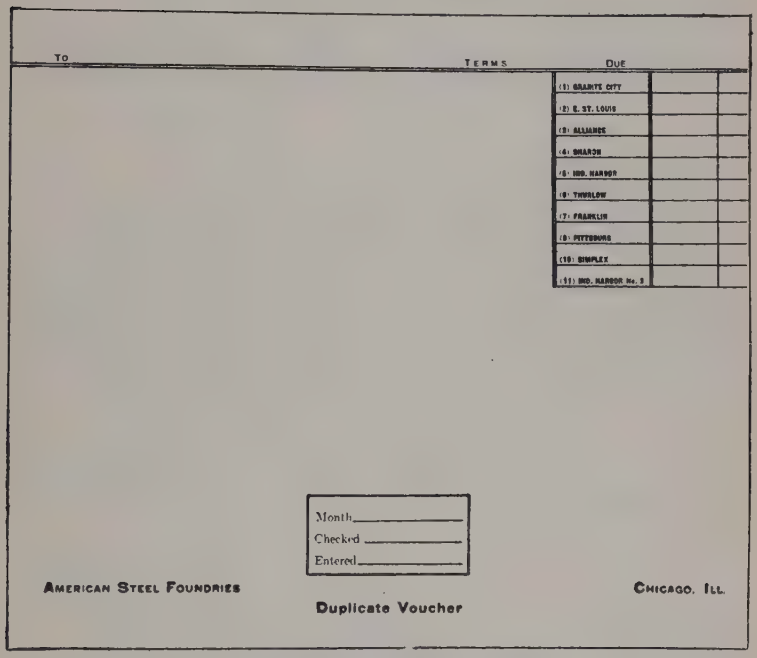
Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

FORM 438

DUPLICATE VOUCHER



On the reverse side occurs the following:

"Endorsements

This check is in Full Payment of account stated on voucher which accompanied it, and the Payee accepts it as such by endorsement.

FORM 439—INDEMNITY BOND (BLANK)

Know all Men by these Presents, THAT WE,..... and ..... are held and firmly bound unto....., of the ..... of ....., County of....., in the State of Illinois, and to....heirs, executors, administrators and assigns, in the penal sum of.....Dollars, lawful money of the United States, for the payment of which sum, well and truly

to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these Presents:

Witness Our hands and seals, this.....day of..... A. D. 19....

The Condition of the above obligation is such, That, whereas

.....

.....

.....

.....

NOW, If the said.....

shall and do, from time to time, and at all times hereafter, defend, save, keep harmless and indemnified, the said..... aforesaid, ...heirs, executors, administrators, agents and attorneys, and all and each of them, of and from all actions, suits, costs, charges, damages, loss and expenses whatsoever (including Attorney's fees), which shall or may, at any time hereafter, happen or come to them, or either of them, for or by reason of the

.....

.....

.....

....., then this obligation to be void; otherwise, to remain in full force and effect.

.....*Seal*

.....*Seal*

.....*Seal*

Form 440—Registered Security

General Direction for Execution of this Bond:

1. This bond should be acknowledged by both Principal and Surety.

2. The Notary Public (or other officer taking the acknowledgement) should affix his seal of office and state the date on which his commission expires, and, in case the acknowledgement is taken before a Notary Public (or other officer) not authorized to act within the County of New York, a County Clerk's Certificate (or other competent authentication), should also be attached.

3. This bond should be accompanied by an affidavit executed by the Principal or by one having knowledge of the facts stating the circumstances of the loss.

4. The authority of the officer or officers executing the bond in behalf of the Surety Company should be shown by a copy of the By-Laws, Resolutions, or other appropriate authorization, certified by the Secretary, and, in case the authorization is given to the holder of a particular office, the Secretary should also certify that the person executing the bond is the holder of such office.

5. Certified copy of the latest Financial Statement of the Surety Company to be attached.

KNOW ALL MEN BY THESE PRESENTS:

That ..... as Principal (hereinafter called "Principal"), and ..... duly authorized to transact the business of indemnity and suretyship in the State of..... and having an office and principal place of business in said State at ..... as Surety (hereinafter called "Surety"), are held and firmly bound unto .....
.....
.....
and ..... as .....
their respective legal representatives, successors and assigns (hereinafter collectively called "Obligees"), in the sum of..... Dollars ($.....) lawful money of the United States, to be paid to the Obligees, their respective legal representatives, successors or assigns, as interest may appear; for which payment, well and truly to be made, the Principal and Surety bind themselves, their respective heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and executed in..... counterpart this .....day of ....., 19....

WHEREAS, the Principal represents that the Principal is the owner of .....
.....
.....
.....

and that the same ha.. been mislaid, lost, stolen or destroyed and cannot be found or produced, in virtue of which the Principal has requested the Obligees to issue to Principal or to Principal's order a new or duplicate instrument or instruments, or to pay to Principal or credit to Principal's account the face amount of same without surrender thereof for cancellation; and

WHEREAS, on the faith of the foregoing representations and in consideration of this bond of indemnity, the Obligees have complied or agreed to comply with said request;

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE, that if the Principal, the heirs, legal representatives, successors or assigns of the Principal, or any of them, shall in case the mislaid, lost, stolen or destroyed original or originals be found or come into the hands or power of any of them, or to the hands, custody or power of any person, deliver or cause the same to be delivered unto the Obligees in order to be cancelled, and shall also at all times indemnify and save harmless the Obligees from and against any and all claims, actions and suits whether

groundless or otherwise, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character by reason of the said mislaid, lost, stolen or destroyed original or originals and/or the issuance of a duplicate or duplicates in lieu thereof or the paying or crediting of the face amount of the original or originals without surrender thereof, whether or not caused by, based upon or arising out of inadvertence, accident, oversight or neglect on the part of the Obligees or their respective officers, agents, clerks and employees and/or omission or failure to inquire into, contest or litigate the right of any applicant to receive any payment, credit, transfer, registration, exchange or delivery in respect of the original or originals and/or the duplicate or duplicates issued in lieu thereof, and/or caused by, based upon or arising out of any other matter or thing whatsoever, then this obligation shall be void; otherwise shall remain in full force and effect.

.....(L.S.)

.....

.....

ATTEST:

..... By.....

Secretary. *President.*

ATTEST:

..... By.....

Secretary. *President.*

Firm Acknowledgment

STATE OF }
COUNTY OF } *ss:*

On this ..... day of ..... 19..., before me personally appeared ..... to me known and known to me to be a member of the firm of ..... described in and which executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same as and for the act and deed of said firm.

Notary Public County
County Clerk's No. .....
County Register's No.... .....
Commission expires ..... *Notary Public.*

Corporation Acknowledgment

STATE OF }
COUNTY OF } ss:

On this ..... day of ..... in the year 19..., before me personally appeared ..... to me known, who being by me duly sworn, did depose and say: that he resides at .....; that he is the..... President of the ....., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

Notary Public County
County Clerk's No. .....
County Register's No.... .....
Commission expires .....

Notary Public.

Individual Acknowledgment

STATE OF }
COUNTY OF } ss:

On this ..... day of ..... 19..., before me personally appeared ..... to me known and known to me to be the person described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.

Notary Public County
County Clerk's No. .....
County Register's No.... .....
Commission expires ..... *Notary Public.*

Surety Company's Acknowledgment

STATE OF }
COUNTY OF } ss:

On this ..... day of ..... 19..., before me personally appeared ..... of ..... to me known, who, being by me duly sworn, did depose and say: that he resides at .....; that he is the ..... of ..... the Corporation described in and which executed the above instrument; that he knowns the corporate seal of said Corporation; that

the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of ..... of said Corporation; that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said ..... further said that he is acquainted with ..... and knows him to be one of the Assistant Secretaries of said Corporation; that the signature of said ..... subscribed to the said instrument is in the genuine handwriting of the said ..... and was thereto subscribed by the order of the Board of ....., and in the presence of him the said .....
Notary Public County
County Clerk's No. .....
County Register's No.... .....
Commission expires ..... *Notary Public.*

FORM 441—GENERAL CONTRACT (SHORT FORM)

This CONTRACT, Made and concluded the ..... day of ..... One Thousand Nine Hundred and ....., by and between ....., of the ..... of ..... County of ....., and State of ....., party of the first part, and ....., of the ..... of ....., County of ....., and State of ..... party of the second part, in these words: The said part.. of the second part covenant.. and agree.. to and with the said party of the first part, to.....
.....
.....
.....
.....
.....
And the said party of the first part covenants and agrees to pay unto the said part... of the second part, for the same, the sum of ..... dollars, lawful money of the United States, as follows: the sum of .....
.....
.....
.....
.....

and for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves each unto the other in the penal sum of ..... Dollars, as fixed and liquidated damages to be paid by the failing party.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals, the day and year first above written.
Sealed and delivered
in the presence of

.....*Seal*
.....*Seal*
....*Seal*

Form 442—Real Estate Option Contract

I, ... of ..... for and in consideration of the sum of ..... Dollars to ..... in hand paid by ..... of ..... do hereby give to the said ..... heirs and assigns, the privilege of purchasing on or before the ..... day of ..... A. D. 19..., the following described real estate, situated in the County of ..... and State of Illinois, to-wit:.....
.....
.....
.....
.....
.....
.....
.....
at and for the price of ..... Dollars, to be paid as follows, viz: ..... Dollars in cash and the sum of..... Dollars .....
.....
.....
.....
.....
to be secured by a mortgage or trust deed on said real estate, in form to be satisfactory to .....; said cash payment to be made and securities delivered on or before the ..... day of ..... A. D. 19..., to .....

I Also Agree To furnish a certificate of title issued by the Registrar of Titles of ..... County or a complete merchantable abstract of title, or a merchantable copy, brought down to

date, or a merchantable title guaranty policy, showing good title to said real estate. In case the privilege of purchase hereby given is exercised, the price above named paid and secured, and the securities accepted, as above provided, I agree to convey and assure the said real estate to said ..... heirs or assigns, by a good and sufficient ..... deed, reciting a consideration of $..... free and clear of all liens or incumbrances whatsoever, except as to taxes, assessments or impositions levied, assessed or imposed upon said real estate subsequent to .....

.....

.....

.....

This Instrument Shall not be recorded, but is deposited by the said ..... by mutual agreement, with ..... and in case the privilege of purchase hereby given is not exercised and the conditions hereof fully performed by said ..... heirs or assigns, and written notice of such exercise and performance given by ..... to said ..... on or before the ..... day of ..... A. D. 19..., said privilege shall thereupon wholly cease (but no liability to refund the money paid therefor shall arise); said abstracts of title be returned in good order, and said ..... shall at once surrender this instrument to ..... for cancellation. During the existence of said privilege of purchase, this instrument shall be binding on ..... heirs, executors, administrators and assigns, who may exercise the rights herein reserved by ..... and receive the surrender above mentioned.

Witness my Hand and Seal, This ..... day of ..... A. D. 19....

.....*Seal*

FORM 443—GARNISHEE DEMAND NOTICE TO EMPLOYER

..... 19...

To M.....

...hereby demand of you the sum of..... Dollars, out of moneys due, or which may become due to ..... now in your employ, as wages or salary in excess of the amount exempted, if any, under the laws of the State of ....., in regard to garnishment.

M..... is hereby authorized to receive the above sum for .....

.....

(*Reverse*)

No.....

GARNISHEE DEMAND NOTICE

.....

.....

vs.

.....

.....

Served the within notice by delivering a copy thereof to the within named

.....

.....

at ..... o'clock .....M.,
this ..... day
of ..... A. D. 19..

Fees, - - - - - $.....
Mileage, - - - - - $.....
Service, - - - - - $.....

.....

STATE OF .....
..... *County,* } *ss.*

.....

being duly sworn deposes and says that on the .....
day of ..... 19..., he served the within notice
by delivering a copy thereof to the within named .....

.....

.....

Subscribed and Sworn to before me this .....
day of ..... 19....

.....

Notary Public.

FORM 444—GARNISHEE DEMAND NOTICE TO EMPLOYEE

..... 19...

To M.....

...hereby demand of you the sum of..... Dollars, out of moneys due, or which may become due to you, as wages or salary in excess of the amount exempted, if any, under the laws of the State of ....., in relation to garnishment.

M..... is hereby authorized to receive the above sum for .....

.....

(Reverse)

No.....

GARNISHEE DEMAND NOTICE

.....

.....

vs.

.....

.....

Served the within notice by delivering a copy thereof to the within named

.....

.....

at ..... o'clock .....M.,
this ..... day
of ..... A. D. 19..

Fees, - - - - - $.....
Mileage, - - - - $.....
Service, - - - - $.....

.....

STATE OF .....
..... *County,* } ss.

.....

being duly sworn deposes and says that on the .....
day of ..... 19..., he served the within notice
by delivering a copy thereof to the within named .....

.....

.....

Subscribed and Sworn to before me this .....
day of ..... 19....

.....
Notary Public.

FORM 445

ANSWER OF GARNISHEE (CORPORATION)

STATE OF..... } ss.
COUNTY OF..... }

In ..... *Court*
Of said County.
Before .....

Returnable.....*A. D. 19....*, *at*.....*o'clock*....*M.*

.....
.....
..... *Answer of Garnishee.*
vs.
..... *Term No.* .....
..... *General No.* .....
.....
Garnishee.

Now comes ..... *summoned as a garnishee in the above and foregoing suit, and for answer therein says:*

That.....*had in*.....*possession, or under*..... *control, no money, credits, rights, effects, choses in action or properties whatever, due or belonging to the said*..... .....*defendant in such suit at the date of service upon*.....*of such garnishee summons, to-wit:*.....*A. D. 19*.... *or at the date of this answer, or at any time between said dates of service and answer.*

That.....*indebted to the said*..... *defendant in such suit in the sum of*.....*Dollars for services performed and wages earned*.....*employ*..... .....*; that*.....*has no other moneys, credits, rights, effects, choses in action or properties whatever in its possession or under*.....*control, due or belonging to the said defendant in such action, and subject to the order of this court*..... .....
.....
.....

That.....*informed and believes that the claim sued on is not for the wages of any laborer, servant or wage earner, and that the said*..... *defendant in such suit is the head of a family residing with the same, and that the sum of*.....*Dollars ($*.....*) of wages,*..... .....
is exempt from garnishment by the laws of the State of Illinois, which exemption is hereby claimed for the said..... ..... *leaving* ..... *and* ..... *cents ($*.....*) in the hands of this garnishee* ..... *subject to the order of this court.*
.....

.....

.....

.....

By.....

STATE OF ILLINOIS, }
..... *County,* } SS. ..... *being first duly sworn according to law, says that he is*.....
of.....*garnishee in the said cause and authorized and instructed to make this affidavit; that he has read the foregoing answer and is acquainted with the contents thereof; and that the same is true to the best of his knowledge, information and belief.*

.....

Subscribed and sworn to before me this.....*day of*....., *A. D. 19*....

.....

Notary Public.

FORM 446

NOTARY PUBLIC'S BOND (ILLINOIS)

KNOW ALL MEN BY THESE PRESENTS:

THAT WE .....
(Principal) (Sureties)
.....*of the County of*.....
in the State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of One Thousand Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this.....*day of*.....*19*...

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That, whereas, the said.....
(Principal)
has been appointed NOTARY PUBLIC in and for the County of....., *residing in the*.....
(City, Town, Village or Precinct)
of .....

Now, therefore, if the said.....*shall*
(Principal)
perform and discharge all the duties required of him by law, as

such Notary Public, to the best of his skill and ability, then this bond to be void, otherwise to remain in full force.

.....(SEAL)
(Principal)

.....(SEAL)
(Surety)

.....(SEAL)
(Surety)

Approved:

.....
GOVERNOR.

STATE OF ILLINOIS, }
..... COUNTY, } SS.

I, ..., *hereby certify that* .....
(Notary Public) (Principal)
....., *who are each personally known to*
(Surety)
me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this.....day of.....19....

.....
NOTARY PUBLIC.

STATE OF ILLINOIS, }
..... COUNTY, } SS.

I, ...*do solemnly swear that I am*
(Principal)
twenty-one years of age, a citizen of the United States and a legal resident of the State of Illinois, and that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of NOTARY PUBLIC, according to the best of my ability.

.....
(Principal)

Subscribed and sworn to before me this....day of.....19...

.....
NOTARY PUBLIC.

☞*The appointee must sign both Bond and Oath, and return to the Secretary of State's Office, with official signature, impression of seal (if he has one) at the place indicated, P. O. Address, etc.*

Post Office address of Applicant:

.....

.....

IMPRESSION OF SEAL .....

FORM 447

CONTRACT TO SELL REAL ESTATE

....., 19....

Received of.....
.....Dollars, part payment toward the purchase of the following described Real Estate:.....
.....
which is hereby bargained and sold to the said.....
for the sum of.....Dollars,
..... Dollars
more to be paid on the delivery of a good and sufficient Warranty Deed of conveyance of the same within.....days from this date, or as much sooner thereafter as the deed is ready for delivery, after the title has been examined and found good, and the balance to be paid as follows:.....
.....
To be secured by Trust Deed or Mortgage on the property above described. Should title to the property prove defective, this $.....to be refunded. Should said.....
fail to perform this Contract on his part promptly at the time and in the manner above specified (time being of the essence of this Contract), then the above.....Dollars shall be forfeited by.....as liquidated damages, and the above contract shall be and become null and void.

.....Seal
.....Seal

FORM 448

CONTRACT WITH EMPLOYEE

THIS AGREEMENT, *Made this.....day of....., 19....,*
between .....
and .....
Witnesseth: .....hire.. and employ.. said ..... in ..... business in .....
in the capacity of.....and agree.. to pay h.... during the time that ..he shall remain in such employment, ...Dollars per.....upon the terms and conditions of this agreement.
Said .....does agree

to and with said.....
that ..he will devote h....entire time, skill, labor and attention to said employment, during the time for which ..he may be so employed, at the wages herein agreed upon.

It is expressly provided and agreed between the parties hereto, that said ....., may, at any time, terminate said employment at.....election.

Said.....shall be the sole judge of the cause for discharge.

.....
.....

Any Agreement or arrangement by which the said.....
.....has been heretofore employed by said
.....is, in further consideration of the premises, hereby canceled, released and discharged.

.....Seal
.....Seal

Form 449

Power of Attorney, with an Interest

Know all Men by these Presents, *That*.....
.....
have made, constituted and appointed, and by these presents do make, constitute and appoint.....
of.....in the State of.....
to be my true and lawful attorney, for me and in my name, place and stead, to sell or bargain the following described property, to-wit: .....
.....
.....
with all the appurtenances thereof, upon the following terms and conditions, to-wit: .....
.....
.....
hereby giving and granting unto my said attorney for a term of .....from this date, the sole and exclusive sale and exchange of the above described property, with full power and authority to do and perform all and every act and thing whatever, requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorney or his

substitute shall lawfully do or cause to be done by virtue thereof.

And in Consideration of One Dollar, to me in hand paid by my said attorney, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I do hereby agree for myself, my grantees, heirs, executors, administrators and assigns, to pay my said attorney, his heirs and assigns.....per cent commission on the gross amount of such sale, bargain or exchange, whenever and by whomsoever sold, bargained or exchanged, together with the advertising and other expenses, provided such sale, bargain or exchange, be made before the expiration of the time granted, as above stipulated; and that should the said property be sold or bargained within the time above granted, by others, directly or indirectly, or from any order or right which I or others do or may possess, in the premises, then and in that case, the commissions as above mentioned, to my said attorney shall not be lessened or decreased thereby, but shall thereupon immediately become due and payable; and, also, that should I withdraw or cause to be withdrawn the said property, or any part thereof, from sale by him, I agree before such withdrawal, to pay my said attorney, his heirs or assigns, all expenses incurred, and also the above named commissions, in full satisfaction of this agreement hereby granting unto my said attorney, his heirs and assigns, a good, perfect and sufficient lien on the said premises for his said commissions, in case of sale, bargain or exchange, or in case of withdrawal of the same from sale, and for expenses incurred as before stated. It is expressly understood that in case of withdrawal of above described property, that I give my said attorney .....days notice, in writing, of my intention, otherwise it shall remain as aforesaid.

In Witness Whereof, ...have hereto set.....hand and seal this.....day of.....A. D. 19....

.....*Seal*
.....*Seal*
.....*Seal*

STATE OF.....
COUNTY OF..... } ss.

I, ...
.....in and for said County, in the State aforesaid, Do Hereby Certify, That.....
.....
personally known to me to be the same person.. whose name.. ..... subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that ..he.. signed, sealed and delivered the said Instrument as.....free and

voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and.....seal, this .....day of.....A. D. 19....

.....

.....

FORM 450

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, *That*.....

.....

of the.....of.....County of.....in the State of.....ha... made, constituted and appointed, and BY THESE PRESENTS do... make, constitute and appoint

.....

of the.....of.....County of.....and State of.....true and lawful ATTORN.... for..... and in.....name.., place and stead to.....

.....

giving and granting unto.....said ATTORN.... full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as..... might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that.....said ATTORN.... or..... substitute shall lawfully do or cause to be done by virtue hereof.

In Testimony Whereof, ...have hereunto set..... hand.. and seal.. this.....day of.....19....

Signed, Sealed and Delivered in Presence of

.....

.....

.....Seal

.....Seal

STATE OF.....
COUNTY OF..... } ss.

I, ...

.....

in and for, and residing in the said County, in the State aforesaid, DO HEREBY CERTIFY, that.....

personally known to me to be the same person.. whose name.. .....subscribed to the foregoing Instrument appeared before me

this day in person, and acknowledged that ..he.. signed, sealed and delivered the said Instrument as.....free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and.....seal, this.....day of.....A. D. 19....

.....

FORM 451

PETITION FOR APPOINTMENT OF NOTARY PUBLIC (ILLINOIS)

STATE OF ILLINOIS, }
..... County }

To His Excellency, The Governor of Illinois:

The undersigned legal voters of the.....of
(City, Town, Village or Precinct)
.....in the county of.....
respectfully petition that your Excellency will appoint.....
.....who is known to us to be twenty-
(Print Name or Use Typewriter)
one years of age, a citizen of the United States and a legal resident of this State, and whose post office address is.....
.....to be a Notary Public in and for said County....

NAME	NAME
1.	19. .....
2.	20. .....
3.	21. .....
4.	22. .....
5.	23. .....
6.	24. .....
7.	25. .....
8.	26. .....
9.	27. .....
10.	28. .....
11.	29. .....
12.	30. .....
13.	31. .....
14.	32. .....
15.	33. .....
16.	34. .....
17.	35. .....
18.	36. .....

Forward this petition, filled out and signed in ink by fifty legal voters residing in the same city, town, village or precinct with yourself. Fill up the enclosed bond, signed by one other good and responsible person; make the impress of your seal thereon, if you have one, sign and acknowledge the oath thereon, and return to this office, with fee in the sum of Two Dollars. *Do not send currency.*

Address

Secretary of State,
Springfield, Illinois.

Is this application for renewal? Answer.....
If so, when does present Commission expire? Answer.....
☞See Sections of law printed on back hereof.

LAWS OF ILLINOIS
Chapter 99
NOTARIES PUBLIC

QUALIFICATIONS

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* that the Governor may appoint, by and with the advice and consent of the Senate, and commission as notaries public as many persons resident in the county in this State for which they are appointed as he may deem necessary, but no person shall be appointed a notary public who is under twenty-one years of age, is not a citizen of the United States, and has not resided in this State one year preceding the appointment.

PETITION

Sec. 2. No person shall be appointed notary public, except upon the petition of at least fifty legal voters of the city, town, village or precinct in which said person resides.

BOND

Sec. 4. Before entering upon the duties of this office, he shall give a bond, payable to the people of the State of Illinois in the sum of $1,000, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of his office, and shall take and subscribe the oath of office as prescribed by the Constitution. The oath and bond shall be deposited in the office of the Secretary of State.

REGISTER WITH THE COUNTY CLERK

Sec. 5. He shall also, before entering upon the duties of his office, have a memorandum of his appointment, and the time

when his office will expire, entered in the office of the County Clerk of his county in a book to be kept for that purpose by said Clerk, for which entry he shall pay a fee of twenty-five cents.

Sec. 7. Each notary public shall, upon entering upon the duties of his office, provide himself with a proper official seal, with which he shall authenticate his official acts, upon which shall be engraved the words descriptive of his office, and the name of the place or county in which he resides.

FORM 452

NOTARY'S CERTIFICATE OF ACKNOWLEDGMENT

STATE OF.....
COUNTY OF.....
.....
} ss.

I, ...
a Notary Public in and for the said .....
in the State aforesaid, DO HEREBY CERTIFY, that.....
.....
personally known to me to be the same person.. whose name.. .....subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that ..he.. signed, sealed and delivered the said Instrument as.....free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notarial Seal, this.....day of .....A. D. 19....

.....
Notary Public.

FORM 453

EXCLUSIVE SALES CONTRACT

To..... Date.....

In consideration of your agreement to advertise my property described as .....
.....
and to show this property to prospective purchasers without any expense to me, and for and in consideration of the sum of One Dollar ($1.00) to me in hand paid, receipt of which is hereby acknowledged, I hereby appoint you my exclusive agent, to make a sale of the above property, for a price of.....
Dollars ($.....) subject to an existing encumbrance..

of ..... ($.....)
bearing interest at.....%, due..... or any less sum which I shall agree to accept.

You are to act as my exclusive agent for a period of..... days from the date hereof.

You are authorized to accept a deposit as earnest money to be applied on the purchase price from any purchaser or purchasers, to be held in escrow by.....
for the mutual benefit of the parties concerned and to execute a binding contract for sale on my behalf, on form known as the ..... for ...improved property, with usual provisions therein contained.

I agree to furnish, at my expense, Abstract of Title showing a merchantable title, or Guaranty Policy made by the ..... Title & Trust Co., or merchantable title shown by Torrens Certificate, for the sale price brought down to date of sale. Also agree to pay you the usual commission as established by the .....Real Estate Board, on such sale price. All taxes, assessments, rents, interest, insurance and general expenses to be prorated to date of delivery of deed.

.....[Seal]
.....[Seal]

FORM 454

CONTRACT FOR EXCLUSIVE SALES AGENCY

To..... *Date*.....

In consideration of your acceptance hereof, and your agreement to advertise, and to use your best efforts to sell, my property described as .....
.....
I hereby appoint you exclusive agent to sell said property, at a price of.....*Dollars ($.....), subject to existing encumbrance.. (included in said price) of* .....*Dollars ($.....), bearing interest at*.....*%, due*.....
I am to give general warranty deed subject to water taxes payable after.....*; general taxes for the year*....., *which are to be prorated as of date of delivery of deed, and to other matters stated in sales contract hereinafter mentioned* .....
.....

Above mentioned encumbrance, if any, is.....to be assumed by purchaser. The earnest money shall be not less than $....., the cash payment, including the earnest money, not less than $....., and the balance paid as follows: .....
.....
with interest at.....per centum per annum, payable semi-annually, secured by notes and Trust Deed in a form ordinarily used by..... Contract of sale and earnest money to be held in escrow by..... Other terms of sale to be those contained in sales contract form known as....., you to determine all details not covered thereby or hereby. You are authorized to execute contract of sale on my behalf.

In case said premises shall be sold by you or me or any one for me, upon the terms herein mentioned or any other terms acceptable to me, I agree to pay you the.....Real Estate Board rate of commission thereon.

The agency hereby created shall continue until.....19....

Singular pronouns used herein shall be read as plural whenever the number of parties hereto so requires.

.....(SEAL)
.....(SEAL)
.....(SEAL)
.....(SEAL)

FORM 455

FINAL NOTICE BEFORE SUIT

STATE OF.....
COUNTY OF..... } *ss.*

.....Plaintiff

vs.

FINAL NOTICE

.....Defendant

To the above named defendant,

FIRST: You will please take notice that the above named Plaintiff claims that you are indebted to.....in the sum of ..... Dollars, for .....
.....

SECOND: Although duly demanded, the same has not been paid, nor any part thereof, save and except the sum of..... ..... Dollars.

THIRD: Now, therefore, unless you remit or appear at this office.....on or before the..... day of.....A. D. 19....at.....o'clock P. M., of said day, for payment of said claim, with interest thereon at the rate of.....per cent per annum from the date of maturity, or make provisions for adjustment thereof, suit will be forthwith brought for the total amount with interest, together with the costs and disbursements of the action.

Dated at.....this.....day of.....

.....

For the above Plaintiff.

FORM 456

DEMAND FOR WAGES BEFORE SUIT

.....19....

To.....,

There is now due me from you, for wages as a..... the sum of.....Dollars and.....Cents, and I now demand of you payment of said sum so due for wages to me, and if default is made in such payment for three days, I shall commence suit for the recovery of said sum, and for.....dollars attorney's fees, as provided by statute.

.....

STATE OF .....,
..... COUNTY. } SS.

.....being duly sworn, on oath says that he served a written demand, of which the above and foregoing is a true copy, on the said..... .....by delivering to him, personally, the said written demand, on the.....day of..... 19....

.....

Subscribed and Sworn to before me this.....day of.....19.....

.....

Notary Public.

FORM 457

ASSIGNMENT OF WAGES

FOR AND IN CONSIDERATION OF *the sum of..... DOLLARS to me in hand paid by.....,*

receipt whereof is hereby acknowledged, I hereby transfer, assign and set over unto.....his heirs, executors, administrators or assigns, all salary or wages due me and to become due me from....., or from any other person or persons, firm, co-partnership, company, corporation, organization or official by whom I am now or may hereafter become employed, at any time or times before the expiration of .....months from the date hereof.

I hereby name, irrevocably, the said..... his heirs, executors, administrators or assigns, my attorney, in my name, to take such legal measures as may be proper or necessary for the complete recovery and enjoyment of the claim hereby assigned, and I hereby authorize, empower and direct the said ....., or any one by whom I may be employed as above, to pay the said demand and claim for wages or salary to the said....., his executors, administrators or assigns, and hereby authorize and empower him to receipt for same in my name.

Dated at.....this.....day of....., 19....

.....

.....

INDEX

INDEX

A

Accounting
  appraisals, 766-776
  bond issues, 703-725
  capital stock, 503-549
    authorized but not issued, 506
    formal entry, 504-505
    investments, 510-512
    non-par value stock, 506, 512
    original issues, 503-514
    par value stock, 503-506
    sales at other than par, 513-514
    statutory requirements, 508
    subscription accounts, 508-511
    subsidiary records, 507-508
    transfer book, 508
    treasury stock, 514-518
    two or more classes of, 507
  finance companies, 424-426
  sinking-fund transactions, 721-723
Accounts receivable, discounting, 389
Accrued interest, accounting, 706-709
Affidavit, lost coupons, 673
Allotment letter, 539
Amendment of charter, 167-170
  certificate of (Illinois), 180
Annual meeting of stockholders, 222-225
  notice of, 225-228
  preparation for, 228
  procedure at, 228
  see Stockholders' meetings
Appraisals, 733-739
  accounting for, 766-776
  formulae, 761-765
  purposes of, 733-734
  U. S. Treasury methods, 755-765
  see "Valuation"
Assessments on full-paid stock, 209
Assignment of wages, 1227-1228
Association under deed of trust
  see Massachusetts trust
Automobile finance companies, 410-414
Automobile financing, 412-414
  credit investigation, 412-413
  non-recourse plan, 412
  recourse plan, 412
Average life of plant, 904

B

Balance sheet analysis, 860-871
  analysis of balance sheet and income statement, 870
  analysis of single balance sheet, 866-867
  analysis of two balance sheets, 867
  construction, 861
  procedure, 862
Bank acceptances, 377-386
  acceptance stamps, 378-379
  commercial letter of credit, 379-380
  defined, 377
  use of, 378
Bank credit and commercial paper, 361
Bankers' shares, 456-457
Bank loans, 364-367
  rate of interest, 372
  rediscount privilege, 373-374
  unsecured, 372
Bankruptcy and insolvency, 1084-1127
  composition, 1089
  distribution, 1088-1089
  effect of discharge, 1087-1088
  forms adopted by U. S. Supreme Court, 1094
  legal formalities at dissolution, 1124
  National Act, 1084-1085
  procedure, 1086-1087
  receivership accounting, 1095-1124
  referees, duties of, 1089-1090
  schedules of debts and assets, 1090-1095
  trustees, duties of, 1090
  voluntary and involuntary, 1085-1086
Banks and small borrowers, 367
Blue Sky Laws, 1186-1190
Board of directors
  see Directors
Bonds
  accounting for, 703-725
  adjustment, 700
  callable, 688-690
  cancellation, 668
  classified, 677
  closed-end mortgages, 697
  collateral trust, 679-681
  convertible, 700-702
  cremation certificate, 670
  directing payment without production of, 675
  discount and premium, 711-714
  divisional, 686
  duties of fiscal agent, 668
  equipment bonds, 683-686, 705-706
  equipment trust certificates, 683-686
  fiscal agent
    see Fiscal agent
  form, 574-577, 631-633, 653-654
  form, execution, exchange and issue, 588
  guaranteed, 685, 704
  income, 699
  interest, funds to pay, 709-710
  limited open-end mortgages, 697
  long and short term, 687
  lost, stolen or destroyed, 669
  mortgage and prior lien, 678-679
  participating, 700
  permanent capital financing with, 550-729
  rate of interest, 698-699
  receivers' certificates, 686
  record of cancellation, 665
  redemption call, 689-690
  redemption, notice of (forms), 725-729
  redemption of, 600, 650, 723-725
  registered, 695-697
  requisition for certification of, 666
  serial, 690-692
  sinking fund, 692-695
  special lien, 686
  stop payment order, 672
  trustee's bond record, 666
  unsecured, 681-683
  with stock warrants, 702

Bond of indemnity, affidavit to accompany, 548
for issuance of stock certificate, 549
for lost coupons, 674
Borrowing, general principles of, 558-559
Budgets, 852-859
advantages of, 852
basis of expense allocation, 855-856
budgeting plant expenditures, 853
budgeting plant expenses, 853-854
expenditures on plant, classification of, 858
expense budgets, 854-855, 856
plant and equipment, 858-859
procedure, 852
Business trust
see Massachusetts trust
By-laws
adoption of, 221-222
American Steel Foundries, 320
General Electric Company, 330
power to alter or repeal, 313-314
power to make, 311-312
purpose of, 314-315
tests of validity of, 315-318
validity of, 318-320
void by-laws as effective contracts, 320

C

Capital
sources of, 339
versus capital stock, 444
Capital assets
treatment of funds invested in, 342-343
valuation of, 733-739
Capitalization
versus capital stock, 444-446
Capital stock, 442-502
account book forms, 977
accounting for, 503-549
accounting for treasury stock, 514-518
affidavit to accompany indemnity bond, 548
agreement to deposit in escrow, 535
allotment letter, 539
authorized, 442-448
authorized but not issued, 506
bankers' shares, 456-457
bond of indemnity for issue of stock certificate, 549
certificate forms, 524-530
certificate of amendment increasing, 540
certificates, 442, 1029
changing to non-par, 489-494
charter provisions on, 101
classes of non-par shares, 486-489
common, relation to preferred, 451
consideration, 499-502
convertible, 454
donated, 485, 517
forms used with, 520-549
fraction of share forms, 534
function of, 442-444
guaranteed, 456
in balance sheet, 518-520
increase of (Pennsylvania form), 541-545
individual subscription blank, 538
issuance of shares, 446
issued, 448
listing of, 446
non-par illustrated, 496-499
non-par value, 462-502
see Non-par value
notice of call, 520-521
notice of forfeiture, 523
notice of liability to forfeit, 522
notice of sale of stock forfeited, 523
par vs. non-par value, 447
power of attorney to subscribe for, 536
preferred, 449-451
remittance with application, 538
receipt for installment, 522
receipt for subscription, 539
report of sales of (Missouri), 546
resolution assessing, 520
resolution making call, 520
resolution to forfeit shares, 523
revocation of subscription, 538
sales at other than par, 513-514
splitting of, 461
stated capital, 443
statement decreasing (Missouri), 546
states permitting issuance of non-par stock, 499-502
stock rights, 459-461
subscription after incorporation, 537
subscription agreement, 102-103
subscription agreement prior to organization 535-536
subscription by letter, 537
subscriptions, 483-484
subsidiary records, 507-508
transfer of subscription, 539
transfers, 957-1032
see Stock transfers
treasury stock, 448-449, 485
two or more classes, 507
unissued, 484
versus capital, 444
Capital stock clauses
see Charter
Capital structure defined, 444
Cash
sources of, 353
Certificate of incorporation
American Steel Foundries, 182
defined, 11
nature of, 167
Certificates of beneficial interest, 456-457
Charter
amendment procedure, 168-170
amendments to, 167-168
American Steel Foundries, 182
capital stock clauses, 160-163
contents, 133
declaration for, 104
defined, 132
filing of, 165-167
Fire Insurance Company of Chicago, 192
form of in South Carolina, 105
General Electric Company, 196
general purpose clauses, 153-156
grant of powers in, 135
issuance of, 170
nature of, 100-101
objects stated in, 6
one or more objects, 6-7
preparation of, 163-164
regulating clauses, 156-160
signing and acknowledging, 164
special provisions, 139-140
special purpose clauses, 140-153
various provisions of, 101-102
Circulating capital, 351-353
and working capital, 352
conservation of, 352
turnover of, 351

Classification, 922-931
account, principles of, 922-924
based on function, 924-927
illustrated, 928-931
limits of, 927-928
Clayton Act, 1183-1186
Closed-end mortgages, 697
Collateral securities, accounting for, 704
Commerce defined, 1184
Commercial discount houses, 386-389
contract used by, 387-388
work of, 386
Commercial letter of credit, 379-380
agreement, 383-386
application for, 382
Commercial paper, 354
banks investigation of, 362-364
form of, 358
Commission house
see Factors
Common law trust
see Massachusetts trust
Composition
see Bankruptcy
Conditional sales contract, 402-409
repossession, 409
Conditions precedent to incorporation, 137-138
Conditions subsequent to incorporation, 138
Consideration, non-par stock, 499-502
Consolidated statements, 1074-1083
Contract, general (short form), 1210-1211
exclusive sales, 1224-1225
exclusive sales agency, 1225-1226
option, 1211-1212
to sell real estate, 1218
with employee, 1218-1219
Convertible stock, 454-455
Corporate finance
rules governing, 339-346
Corporations
advantages of, 4-5
alien, 12
by estoppel, 8
changing location, 130-131
classification under New York law, 9-10
defined, 3-4
de facto, 7-8
de jure, 7-8
domestic, 10, 12
duration, 102
financial, 9
foreign, 10-11, 12
illegal acts of, 137
kinds of, 9
moneyed, 10
municipal, 10
name, 128-130
non-stock, 10-11
organization of, 69
power to create, 132-133
powers granted to, 100, 139
private, 9
public, 9
purposes of, 5-7
quasi-public, 9
relation to stockholders, 8-9
reports, 798-851
stock, 10-11
where to incorporate, 69-86
Coupon, form of, 577-578, 633, 655
directing payment without production of, 675
lost, affidavit for, 673
lost, bond of indemnity, 674
Credit, use to finance sales, 401-402
Cumulative voting, 217-218

D

Debenture bonds, 681-683
Deed of trust
see Trust deed
De facto corporation
conditions precedent and, 139
Default, remedies on, 661
Departmentization, 916-931
capital asset expenses, 919-921
control, 922
expense distribution, 917-919
meaning of, 916
purpose of, 916-917
Depletion defined, 754
theory of, 754-755
Depletion of gas and oil land, 759
timber lands, 760-761
Deposit receipt, 1176
Depreciation, nature of, 898-899
allocation to departments, 908-910
allocation to output, 910-916
average life, 904
base, 905
classified, 899-900
composite, 900-902
defined, 899
overtime, etc., 910
repairs vs., 902-904
reserves, 905-907
Directors
committees, 291
contracts with company, 293
de facto directors, 279-280
defined, 11
delegation of powers, 290
election of, 222
fiduciary powers, 292-294
forms used for meetings, 303-310
function and organization, 275-276
liability of, 274-275
liability to creditors, etc., 296-297
limitations on powers, 287-290
meetings of, 281-287
negligence of, 294-296
notice of special meetings, 284
powers of board, 276-277
quorum, 285-287
removal of, 278
resolutions, 299-303
statutory liability of, 298
tenure of office, 277-279
Discount on bonds, 711-714
Discount on capital stock, 513
Dividends, 457-459
accounting for, 788-790
classified, 785
declaration of, 787
extra, 458
forms relating to, 790-797
in case of non-par value stock, 470-480
laws governing, 470-480
liability of directors for, 274
on preferred stock, 788
record of General Motors Corporation, 785-787
regular, 458
scrip, 457
stock, 458
surplus and, 784-785

Draft (form), 429
Dummy incorporators, 173

E

Endorsements, forms of, 429-430
  for collection, 429
  in blank, 429
  restrictive, 429-430
  waiving protest, 430
  without recourse, 429
Equipment trust certificates, 683

F

Factors, services of, 426-427
Federal Trade Commission, 1190-1204
  Act, 1194-1204
Filing of charter, etc., 165-167
Finance
  permanent capital financing, 550-729
  rules governing corporate, 339-346
  working capital financing, 347-441
Finance companies, 401-426
  accounting, 424-426
  automobile, 410-414
  dependent, 402-403, 419
  financing, 419-420
  independent, 403-409
  phonographs, 414-418
  relation to dealer, 420-421
  versus bank, 418
Finance plan for phonograph company, 414-418
Financial plan, 552-553
  for going concern, 557-558
Financial structure of business, 343-346
Financing finance companies, 419-420
Financing instalment sales, 421-424
  rules to be followed, 423-424
  three plans, 421-423
Financing, permanent capital, 442-502
Fire losses, appraisals, 734
Fiscal agent, duties of, 668, 709
  cremation certificate, 670
  notice of appointment, 671
  stop payment order, 672
Full-paid stock, assessments on, 209
Funds
  division between current and capital assets, 342-343
  sources of, 340-342

G

Garnishee, answer of, 1214-1216
Garnishee demand notice to employee, 1213-1214
Garnishee demand notice to employer, 1212-1213
General Motors Acceptance Corporation
  conditional sales contract, **402-403**
General purpose clauses
  see Charter
Going concern, financial plan for, 557-558
Goodwill in consolidated statements, 1077-1078
Guaranteed stock, 456
  bonds, 685, 704

H

Holding companies, 1073-1083
  consolidated statements, 1074-1083
  goodwill, treatment of, 1077-1078
  modern tendencies, 1073-1074
  surplus, treatment of, 1078
Hoskold's formula, 762-765

I

Incorporation
  advantages of, 4-5
  certificate of, 90-93
  constitutional restrictions, 134-135
  fees, etc., 93-99
  grant of powers, 135
  illegal objects, 5
  legal requirements, 93-99
  preliminary agreements, 87-89
  procedure, 90
  publication of notice, 164-165
  purposes of, 5-7, 135-136
  requirements of leading states, 71-86
  state forms, 106, 173-201
  statutory requirements, 137-139
  unauthorized purposes, 137
  under general laws, 133-134
  unlawful purposes, 137
Incorporators
  as subscribers, 171
  defined, 171
  dummy, 173
  number of, 173
  specific qualifications, 172-173
Indemnity bond, 1205-1206
  registered security, 1206-1210
Indenture
  see Mortgage
Index numbers, weighted, 895-896
  use of, 896-898
Insolvency
  see Bankruptcy
Inspectors of election, 235, 268
Instalment sales, 401-426
  adopting plan of, 410
  credit investigation, 412-413
Interest coupon
  see Coupon
Interest, rate of, 372, 698
  accrued, accounting, 706-709, 710-711
  effect on real estate values, 740-742
  funds for paying bond, 709-710
  in valuations, 758-759
Invested capital
  financial structure, 343-346
  sources of, 339
Investment banker, work of, 551-552
  financial plan, 552-553
  letter to, 554-557
Investment in plant, 888-956

J

Joint stock company
  advantages of, 16
  defined, 15, 17-18
  differs from partnership, 15-16
  limited liability under, 16-17
Joint venture
  defined, 15

L

Limited liability of stockholders, 202
Listing of capital stock, 446
Loan, application for (form), 432
  agreement to extend (form), 435
  agreement to renew (form), 434
  short-term (form), 433

M

Management
financial responsibility of, 340
Massachusetts trust
beneficiaries under, 23
compared to corporation, 20-21
declaration of trust of Western Massachusetts companies, 24-47
described, 19
distinguished from partnership, 22
legal status, 24
trustees under, 21-22
Mortgage, 559-560
bond redemption, 659-660
closed-end, 697
contents of trust indenture, 651-662
corporate, illustrated, 568-628, 628-650
corporate mortgage, 566-567
explanation of essential clauses, 565-566
form of, 560-565
granting clause, 655-657
limited open end, 697
nature of trust indenture, 650
operation of, 566
particular covenants, 592
particular covenants of company, 658
property transferred or pledged, 655-657
reconveyance clause, 657
release of property, 602
release of property from indenture lien, 660
remedies on default, 24, 607
sinking fund provisions, 598, 659
supplemental indentures, 606, 661
trustee, 662
trust reservation, 657

N

Name, corporate, 128-131
change of, 130
choice of, 129
protection of, 129
purpose of, 128
special requirements, 128-129
Non-par value stock, 462-502
accounting, 506
analysis of proprietorship, 470
as bonus, 495
changing to, 489-494
classes of shares, 486-489, 499-502
consideration for, 495, 499-502
consideration for in Illinois, 467
dividends, 470-480
donated, 485
historical, 462-465
illustrations, 496-499
miscellaneous statutory regulations, 494-496
stated capital, 466-470
states permitting issuance of, 499-502
stockholder's liability on, 495
subscriptions, 483-484
taxation of, 496, 499-502
treasury, 485
treatment of surplus, 480-483, 494
unissued, 484
voting privileges, 489
Notary public, petition for appointment (Illinois), 1222
certificate of acknowledgment, 1224
Notary public's bond (Illinois), 1216-1217
Notary's certificate of protest, 438
Note broker
investigation by, 355-361
Note, promissory (form), 428
collateral, short form, 437
collateral, with power of attorney (form), 431
collateral, with power to sell, 439, 440
coupon (form), 430
installment (form), 436
payable to corporation (form), 428
with confession of judgment (form), 428

O

Officers, election of, 237-238
Open-end mortgages, 697
Open market loans, 354
investigation by note broker, 355
Option contract, 1211-1212
Organization
forms other than corporate, 13-47
Original cost, 736-737

P

Partnership
characteristics of, 14-15
limited, 14
liquidation, 14
Partnership associations
explained, 18-19
legal status of, 19
Pedestrian counts, 743-745
Plant expenditure, control of, 946-956
approvals, 947
origin, 946-947
purpose, 946
Plant expenses, analysis of, 898-916
Plant, investment in, 888-956
Plant records, 931-946
nature of, 931-932
plant ledger, 932-940, 940-946
purpose of, 931
Power of attorney for stock transfers, 1030, 1031
general. 1221-1222
with interest, 1219-1221
Preferred stock, 449-451
certificate form, 453
cumulative, 450
exchanged for bonds, 455-456
non par in case of dissolution, 488-489
non-participating, 450
participating, 450
redemption privilege, 451-453
relation to common, 451
Premium on bonds, 711-714
Premium on capital stock, nature of, 513
Price discrimination, 1184
Promoter
agreement to purchase property, 60
contracts of, 54-62
contract with subscribers, 56
defined, 48
expenses and liabilities of, 62-63
legal status of, 63-64
notice accepting option, 61
option agreement, 55
profits of, 50-53
qualifications of, 50
relation to company, 52
relation to directors, 53
work of, 48-49
Promotion
acceptance of offer to underwrite, 59

competition, 64
defined, 48
making the investigation, 66-68
offer to underwrite, 58
risks of, 49-50
stages in, 64
underwriting agreement, 58
Proprietorship form of organization
objections to, 13
Prospectuses
directors liability on, 297
Protective agreements, 1152-1162
Proxies
duration of, 217
form of, 217, 272
pyramiding of control, 486-487
revocation of, 216
voting by, 215-217
Publication of notice of incorporation, 164-165

R

Real estate valuation, 740-753
Receivers' certificates, 686
Receivership accounting, 1095-1124
Reconveyance clause, 657
Redemption call, bonds, 689-690, 725-729
Rediscount privilege, 373-374
Registered bonds, 695-697
Registered security, 1206-1210
Registrar supervises stock issues, 446
Regulating clauses
see Charter
Regulation, state and federal, 1182-1228
Clayton Act, 1183-1186
need of, 1182
Sherman Act, 1182-1183
Reorganizations, 1128-1181
deposit and protective agreements, 1152-1162, 1167
illustrated, 1129-1132
reasons for, 1128
receivership and reorganization illustrated, 1132-1152
remedial measures, 1129
subsidiary company, 1162
Reports, corporation, 798-851
Blue Sky Law, 847-851
governmental, 832-851
managerial, 829-831
nature of, 798-799
stockholders', 798-829
Reports of officers, 237
Reproduction cost, 737-738
less depreciation, 738
Request and estimate
see Plant expenditure
Resolutions
directors', 246, 299-303
stockholders', 245-246
Retail finance plan for phonograph company, 414-418
Revenues, corporate, treatment of, 777-797
from ordinary operations, 778-780

S

Scrip, fractional, 1178
Serial bonds, 690-692
Sherman Act, 1182-1183
Sinking fund accounting, 721-723
Sinking fund bonds, 692-695
Sinking fund bonds vs. serial, 691
Sinking fund provisions, 598, 659, 714-721
Sinking fund reserve accounting, 722-723
Special purpose clauses
see Charter
Splitting of stock, 461
State and federal regulation, 1182-1228
Stated capital, 443, 465-466
statutory requirements, 466-470, 471-472
Stock certificate book, 1029
Stock dividends with non-par value stock, 470-480
Stock exchange, 1033-1072
committee on stock list, 1037
curb market, 1034
delivery of securities, 1055
kinds of markets, 1033
listing, 1035-1037
New York, 1033
Stockholders
contribution among, 206
liability affected by transfer, 207-209
liability of, 202-204
liability of in national banks, 204
liability of pledgees, trustees, etc., 205
liability on watered stock, 209
liable as partners, 206
nature of liability, 204
number of votes, 212
powers of, 219-220
right to vote, 211
statute of limitations, 205
Stockholders' meetings
adjournment, 238, 244
annual meeting, 222-225
election of officers, 237-238
first meeting, 220-221, 254, 257
form of ballot, 271
forms used in connection with, 251-273
illustrated, 249-251
list of stockholders, 271
methods of voting, 234-235
minute book, 247-248
new business, 238
notice of, 225-228
notice of special meeting, 241-242
preliminary transactions, 230
preparation for annual meeting, 228
procedure at annual meeting, 228-229
powers of stockholders, 219-220
quorum, 230-232
reports of officers, 237-238
routine procedure, 233
service of notice of special meetings, 242-243
stockholders' resolutions, 245-246
special meetings, 239-241, 244
unfinished business, 238-239
waiver of notice, 243-244
Stock ledger forms, 1027
Stock rights, 459-461
value of, 460-461
Stock transfers, 957-1032
account book forms, 977
accounting for, 989-1006
books, 1027-1028
closing books, 1069
form of endorsement, 965-967
independent transfer agents, 1018
lost and stolen certificates, 964-965
negotiability of certificates, 958-959
New York Stock Transfer Tax Law, 967
power of attorney for, 1030- 1031
record of, 979-987

requirements of transfer agent, 1015-1017
small companies, 1012
stock exchange regulations, 957-958
stock ledger, 1027
Uniform Stock Transfer Act, 959
Stock warrants, 456, 702
Subscribers, liability of, 203
Subscriptions to capital stock
accounts, 508-511
agreement, 102-103, 536
forms used, 535-539
Suit, final notice before, 1226-1227
demand for wages before, 1227
Surplus and dividends, 470-480
Surplus, treatment of, 480-483, 777-797
capital, 782
dividends and, 784-785
origin of paid-in, 781-782
reserves, 783
sources of, 482, 777-778

T

Taxation of non-par shares, 499-502
Tellers of election, 235, 268
Time payment plans, 401-426
Trade acceptances, 374-377
defined, 374
forms of, 375
uniform, 376
Transfer agent issues shares, 446
Transferee, liability of, 207
Transfer of stock affects liability, 207
Transferor, liability of, 207
Treasury stock, 448-449, 485, 514-518
Trust deed
see Mortgage
Trustee, mortgage provisions concerning, 618, 662
Trustee's certificate, 578, 655
bond record, 666
record of examination, 667
Trust fund theory of capital stock, 465
Trust indenture, nature of, 650
contents, 651-662
Trust receipt, 379, 381
Trust reservation, 657
Turnover on capital assets, 889-898
standardization of rates, 894-895
turnover defined, 889

U

Uniform Warehouse Receipts Act, 397-401

V

Valuation and appraisals, 733-776
see "Appraisals"
accounting, 766-776
bases of, 734-735
capitalization of assets, 750-751
composite plant, 748-750
equipment, 751-752
formulae, 761-765
machinery and tools, 752
market value, 738
meaning of value, 735-736
net income as base, 745-747
original cost, 736-737
pedestrian counts, 743-745
present value method, 756-759
problems involved, 738-739
real estate, 740-753
reproduction cost, 737-738
sales of neighboring property as base, 747-748
wasting assets, 754-765
Value, meaning of, 735-736
Vested rights and by-laws, 313, 316
Voluntary association
see Massachusetts trust
Voting
by corporations, 214
by proxy, 215-217
cumulative, 217-218
manner of, 214
methods of, 234-235
pledgor and pledgee, 213
pyramiding of control, 486-487
right to vote, 211, 213, 236
statutory regulation of, 212
statutory requirements, 214
with non-par shares, 489
Voting trusts, 872-887
banking corporations, 876-877
certificate (form), 880-881
distinguished from proxies, 875-876
form of, 879-886
legality of, 873-875
notice of meeting (form), 887
purpose and origin, 872-873
terms of, 877-879
Voucher check, 1203, 1204-1205

W

Wages, assignment of, 1227-1228
Warehouseman's lien, 395
Warehouse receipts, 389-401
adaptability, 396
credit facilities, 391-392
kinds of, 393-397
kinds of warehouses, 389
negotiable, 392-393
uniform act, 397-401
use of, 392-393
work of warehouse, 390-391
Warrants, stock, 456, 460
Wasting assets, valuation of, 754-765
Watered stock
liability on, 209
prohibited, 211
Working capital
bank loans, 364-367
banks and small borrowers, 367
financing, 347-441
position, 348-351
proper amount of, 351
sources of, 353